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EXTRADITION—REFUSING REQUISITION OF FUGITIVE BECAUSE OF THE FEAR THAT HE WILL BE LYNCHED

Governor Crane of Massachusetts has been petitioned to refuse the requisition of Governor Aycock for a negro who is charged with arson in North Carolina, because of the alleged impossibility of his obtaining a fair trial and the danger of his being lynched forthwith. Governor Aycock has promised protection to the accused, and it is generally conceded that he will do all in his power, but, it is urged, two lynchings have already taken place during his administration, in spite of his efforts, and that there is no ground for believing that he can keep his promise. Relative to this incident *Cases Cited* has the following comment: "The provisions for surrendering criminals who have fled from justice are mandatory, but there is no recognized mode of compelling it. On previous occasions requisitions have not been honored. Thus, Indiana declined to surrender Governor Taylor of Kentucky, who was charged with the murder of Goebel; Ohio refused to surrender a negro to Kentucky for fear of lynching; and Governor Aycock himself sent a similar refusal to Tennessee for the same reason. A proceeding of this kind is a terrible arraignment of the administration of justice in a sister state, and is apt to shame the latter into using the greatest efforts to prevent lynching, if the good effect is not lost in the resentment which it is bound to stir up."

We cannot too strongly express our disapproval of these sentiments. It is a most unfortunate weakness in our federal government that it has not hitherto provided effective means for meeting the unwarranted refusal of small-minded or unscrupulous governors to surrender fugitives from justice demanded by sister states. What right has the governor of Massachusetts to "arraign" the administration of justice in North Carolina, or what right has the governor of Indiana to say that one charged with crime in Kentucky cannot obtain a fair trial in the latter state? Such an insinuation passing from one nation to another would be considered an affront to the dignity and honor of the state to which it had reference. The states of this union have the same rights of sovereignty except those which they have surrendered to the national government. Thus, in Missouri v. Illinois, decided by the supreme court January 28, 1901, in which, the right of Missouri to object to the action of Illinois in dumping the sewage of Chicago into the Mississippi river was under discussion, the court said: "If Missouri were an independent and sovereign state all must admit that she would seek a remedy by negotiation, and that failing, by force. Diplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that upon the latter would be devolved the duty of providing a remedy." We believe these remarks are particularly pertinent to this question. The states have surrendered their right to make and to enforce treaties of requisition to the federal government. Upon the latter, therefore, devolves the duty to provide an effective and prompt method for securing the extradition of fugitives from justice, and one that will not depend upon the whim or caprice of an erratic governor.

The constitution binds the governor of every state to return a fugitive from justice "on demand," and his refusal to grant a requisition *for any reason*, is a breach of his oath to support the constitution. Kentucky v. Dennison, 65 U. S. 161; 53 Cent. L. J. 421; *In re* Voorhees, 32 N. J. L. 141. In the last case cited, Chief Justice Beasley said that this was an imperative obligation and only needed the passage of an act conferring the right to make requisition not on the governor, but upon some arm of the federal government in each state to make it perfectly effective. At the last session of congress a bill was presented embodying this suggestinon, (see 54 Cent. L. J. 1), in which it is provided that if the executive authority of the state refuses the demand for requisition, a warrant may issue to any marshal of the United States commanding him to arrest the fugitive and bring him before the court having jurisdiction of the offense charged against him. This is a law that should have been enacted years ago; indeed, the states have a right to demand it in return for the surrender of their sovereign power to make and enforce extradition treaties of their

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own. Moveover, its enactment would have avoided many of the unhappy and serious clashes of authority between the governors of sister commonwealths that have resulted over the extradition of fugitives from justice.

NOTES OF IMPORTANT DECISIONS.

BANKRUPTCY—IS THE BUYING AND SELLING OF STOCKS AND BONDS A "TRADE PURSUIT" WITHIN THE MEANING OF THE BANKRUPT ACT?—Who is a "trader?" and what is a "mercantile pursuit?" within the meaning of the bankruptcy act, are too often very puzzling questions. The decisions, however, are rapidly defining these terms—at least, negatively. Thus, in the recent case of *In re* Surety and Guarantee Trust Co., the United States Circuit Court of Appeals, for the seventh circuit, has just decided that the words "trader" and "mercantile pursuits," in section 4b of the bankruptcy act, are to be construed in the technical sense in which they are known to the law, and the buying and selling of bonds, stocks and other securities is not a "trading pursuit" within the meaning of the act. The opinion in this case was handed down only a few weeks ago, and is not officially reported in any of the reporters. As it adds another link to the negative definition of the important words just referred to, we have thought it expedient to publish it at once. Jenkins, J., in speaking for the court, said:

"Is the buying and selling of stocks, bonds and other securities a "trade pursuit" within the meaning of the bankrupt act? In a popular sense trade comprehends every species of exchange or dealing. It is, however, chiefly used to denote barter by purchase and sale of goods, wares and merchandise, either at wholesale or at retail. A trader is "one who makes it his business to buy merchandise or goods and chattels and to sell the same for the purpose of making profit." Bouvier, Vol. 2, p. 741. The opinion in the case *In re* New York and Westchester Water Company, 98 Fed. Rep. 711 (affirmed on appeal *sub. nom. In re* Morris, 43 C. C. A. 91), contains an able and lucid review of the definition of the term as known to the law, and declares that "the business of a trader includes both buying and selling either goods or merchandise, or other goods ordinarily the subject of traffic;" and that the term "mercantile pursuits" means "the buying and selling of goods or merchandise, or dealing in the purchase and sale of commodities." The term "goods" means articles of trade, commodities, wares, merchandise. Under the bankruptcy law of England it was ruled that dealing in shares in joint stock companies was not trading within the meaning of the law. *In re* Cleland, L. R. 2 Ch. App. 465. And so likewise it was held under the national bankruptcy act of 1867. *In re* Woodward, 8 Ben. 563. We are constrained to agree with these opinions. The present act is more restrictive than the act of 1867, and the term "trader" can not be enlarged beyond its technical legal meaning. It has usually received such strict interpretation. Thus, mining companies are held not to be traders. *In re* Elk Park Mining and Milling Company, 101 Fed. Rep. 422; *In re* Rollins Gold and Silver Mining Company, 102 Fed. Rep. 982; *In re* Chicago Joplin Lead and Zinc Company, 104 Fed. Rep. 67; *In re* Woodside Coal Company, 105 Fed. Rep. 56; *In re* Keystone Coal Company, 109 Fed. Rep. 872; *In re* Tetopa Mining and Smelting Company, 110 Fed Rep. 120. So also insurance companies are held not to be traders; *In re* Cameron Town Mutual Fire, Lightning and Windstorm Ins. Company, 96 Fed. Rep. 756. The keeper of a saloon and restaurant (*In re* Chesapeake Oyster and Fish Company, 112 Fed. Rep. 960), and an incorporated club (*In re* Fulton Club, 113 Fed. Rep. 997), are held not to be traders although they dealt in the buying and selling of commodities. It was held *In re* Gabriel Sanitorium, 95 Fed, Rep. 271, that a corporation maintaining a private hospital for consumptives is a trader, and *In re* Morton Boarding Stables, 108 Fed. Rep. 791, it was ruled that a corporation conducting boarding stables is a trader within the meaning of the act. These two cases seem to stand apart and not to be sustained by the weight of authority, and one of them is distinctly disproved. We are inclined to hold that congress employed the words "trader" and "mercantile pursuits" in the technical sense by which they were known to the law. If it be desirable that the provisions of the act should be extended to include the business of dealing in stocks and bonds, which now engages the time of many people, it must come about by legislative action, and not by the act of the court in enlarging the technical meaning of a term long known to and well defined in the law."

CONSTITUTIONAL PROTECTION OF "ORIGINAL PACKAGES" EMPLOYED IN INTERSTATE COMMERCE.

1. *Exclusive Right of Federal Regulation over Interstate Commerce.*—The federal constitution bestows on congress exclusive power to regulate interstate commerce where the subject-matter over which it is exerted is national in its character, requires general regulation or admits thereof.[1] In the absence of such regulation legislation on the part of the state is forbidden, upon the theory that congress adopts the common or civil law

[1] Cooley v. Board of Wardens, 12 How. 299; Keiser v. Ill. Cent. R. Co., 18 Fed. Rep. 151; State Freight Tax, 15 Wall. (U. S.) 232; Welton v. Mo., 91 U. S. 275; Henderson v. Mayor, 92 U. S. 259; Walling v. Mich., 116 U. S. 446; Robbins v. Shelby Co., 120 U. S. 489; Farris v. Henderson, 33 Pac. Rep. 380. (Okl.)

[2] Welton v. Mo., 91 U. S. 282; Hall v. De Cuir, 95 U. S. 485; Robbins v. Shelby Co., 120 U. S. 489; Brennan v. Titusville, 153 U. S. 289.

when it remains silent.[2] Among the subjects thus excluded from state control is the importation of goods from one state into another. The prosperity of entire districts might depend upon the readiness with which their exports are received in other states, and retaliation would follow exclusion. The constitution, in delegating to congress the power of regulating interstate traffic, recognizes that local jealousies might lead a particular community to attempt the proscription of foreign goods or the imposition of burdensome restrictions upon their sale. It is to prevent these results that free trade between the states is established.

2. *What is Meant by "Original Packages."*—It must not be supposed that because goods are the growth or manufacture of another state, they are therefore free from all save federal regulations. It is only while they retain their interstate character that they receive constitutional protection. If that character be lost, they may be seriously affected by local legislation. Since it is only while goods continue to constitute an "original package," or bulk, that they are secure, it becomes of first importance to determine what is an "original package." It has been thus defined: "The original package is the package delivered by the importer to the carrier at the place of shipment in the exact condition in which it was shipped. If in single bottles, shipped singly, or if in packages of three or more securely fastened together and marked, or if in a box, barrel, crate or other receptacle, the single bottle, in the one instance, the barrel, box, crate or other receptacle, respectively, constitute the original package. If sold or delivered, it must be sold or delivered as shipped and received."[3] Again it is said, "An original package as applied to interstate and international commerce, is a package, bundle or aggregation of goods put up, in whatever form, covering or receptacle for transportation, and as a unit transported from one state or nation to another."[4]

3. *What are not "Original Packages."*—It does not follow that because goods are received in the same condition in which they were shipped, the different packages contained in a larger receptacle are all original packages. Thus, where goods are shipped into a state, inclosed in a crate or open box, in which are placed separate bottles wrapped and sealed, the outside box and not the particular bottle is the original parcel;[5] and where cigarettes were packed in boxes containing ten each and these placed in a larger box and thus shipped, the larger receptacle was held to be the original package.[6] Where liquors were imported into a state in open boxes, with no cover save a strip with the name of the consignee thereon, each bottle being separately wrapped by itself in pasteboard and paper and laid in the open box, the latter and not the individual bottle was deemed "original."[7]

Merely calling an aggregation of goods an original parcel does not make it such. Consequently if bottles of liquor, wrapped each by itself in tissue paper and labeled "Original Package" are shipped in an open box with layers of hay between them, each box being marked with the number of bottles it contains, the outside receptacle and not the bottle is "original;" but where the carrier furnishes the crate which is attached to the car, and the bottles are piled therein, each bottle being wrapped in a separate bag and directed, the bottles as contained in the bags constitute the original packages.[8]

4. *Size of Receptacle as a Test of its Character as an "Original Package."*—Size has little to do with determining the legal character of a package; nor is it material whether the sale is made by an importer to local wholesaler, to a retailer or to a consumer; in each instance, according to one line of decisions, the imported goods, if in original receptacles, still retain their character as interstate goods and are protected from interference by the state laws.[9] In one respect courts have examined into the size of the package; namely, to decide the question of good faith in its importation. The parcel must, it is held, be of the customary size employed in *bona fide* transactions between manufacturers and wholesalers residing in different states and dealing in this com-

[3] Guckenheimer v. Sellers, 81 Fed. Rep. 997-1000; McGregor v. Cone, 104 Iowa, 465, 39 L. R. A. 484, 73 N. W. Rep. 1041.

[4] Austin v. State, 101 Tenn. 563.

[5] *In re* Harmon, 43 Fed. Rep. 372.

[6] *In re* May, 82 Fed. Rep. 422; Austin v. State, 101 Tenn. 563.

[7] State v. Chapman, 13 Dak. 414, 10 L. R. A. 432, 438, 47 N. W. Rep. 411; May v. New Orleans, 178 U. S. 496.

[8] Keith v. Ala., 91 Ala. 2, 10 L. R. A. 430, 8 South. Rep. 353.

[9] State v. Winters, 44 Kas. 723, 10 L. R. A. 616, 25 Pac. Rep. 235; Schollenberger v. Penn., 171 U. S. 1.

modity. The Supreme Court of the United States has recently announced the law by saying: "The whole theory of the exemption of the original package from the operation of the state laws is based upon the idea that the property is imported in the ordinary form in which from time immemorial foreign goods have been brought into the country." The importation must be made "in the usual manner prevalent among honest dealers and in a *bona fide* package of a particular size."[10] The same doctrine has been declared in Pennsylvania, the court deciding that "a package devised by a non-resident manufacturer or put up by him, adapted for sale at retail to individual consumers, such for example as a flask of whiskey or a tub or pail or roll of oleomargarine, and actually sold by him or his agent to the consumer for use as an article of food or drink, in violation of the laws of the state, is not an 'original package' within the meaning of the law relating to interstate commerce." The court regarded such an importer as "engaged in an effort to carry on a forbidden business by masquerading in a character to which he has no honest title."[11] This doctrine immeasurably extends the right of the state over interstate traffic. It dispenses with the question whether the goods, when sold, are enclosed in the original receptacle, and reduces the judicial inquiry to the determination of the size of the parcel. The rule thus announced may operate to defeat an evasion of the law in some instances, but its application is far less certain than if the test were the condition of the package when shipped and delivered.

5. *What Breaking of an "Original Package" is Sufficient to Destroy its Interstate Character.*—Although commodities are ordinarily protected while remaining in the original packages, if at any time they cease to be interstate goods they may be regulated or their sale prohibited as if they were domestic. This change occurs if the outer case is broken, even though the goods are packed in separate parcels and the latter remain intact.[12] But this breaking of the bulk must be for the purpose of rendering the goods available for sale or to extract a portion for disposition; hence, a mere removal of a cover to see if the package contains what it is supposed to hold;[13] or the drawing of the bung from a barrel of liquor in order to take a small quantity for a test, will not render the liquor domestic in its nature.[14] Again, this alteration of character may be effected by a sale or other disposition of the imported goods within the state, even though such sale be of the original unbroken package;[15] the theory being that by a sale or gift, the goods become mingled with the mass of property within the state. A further reason may be, the impossibility of determining whether goods remain in their original packages or have been fraudulently packed so as to resemble importations, when they are in the hands of others than the importer.

6. *"Original Packages" Versus the Police Power of the State.*—The commerce clause of the constitution impinges upon the police power of the state, yet it is not wholly destructive thereof, even where the states seek to regulate interstate traffic. They may pass laws for the protection of their inhabitants, but these cannot be made a cloak for a substantial interruption of commerce between the states. Thus, while it may be true that the presence of alum in baking powders is deleterious yet a statute requiring all baking powder packages containing this ingredient to exhibit a statement to that effect conspicuously stamped upon the wrapper, is unconstitutional, as an unreasonable interference with interstate commerce.[16] But if the regulation is a fair and rational attempt to preserve the health of the people, it is constitutional, although it obstructs the sale of goods in the original package. Hence, laws have been upheld which forbid the introduction and sale of food products, "coated, colored or polished," whereby damage or inferiority is concealed,[17] even though they tend to forbid the sale of such goods in the original parcels.

7. *State Control of Intoxicating Liquors in "Original Packages" Under the "Wilson Act."*—The class of regulations under the state police power which has given rise to the

[10] Austin v. Tenn., 179 U. S. 343; Com. v. Schollenberger, 156 Penn. 201.

[11] Com. v. Paul, 170 Penn. 284.

[12] May v. New Orleans, 178 U. S. 496.

[13] *In re* McAllister, 51 Fed. Rep. 282.

[14] Wind v. Iler., 93 Iowa, 316, 27 L. R. A. 219, 61 N. W. Rep. 1001.

[15] Leisy v. Hardin, 135 U. S. 100; Brown v. Md., 12 Wheat. 419.

[16] *In re* Ware, 53 Fed. Rep. 783.

[17] Arbuckle v. Blackburn, 113 Fed. Rep. 616.

most numerous questions is that pertaining to the prohibition or regulation of the sale of intoxicants in the receptacles in which they were shipped. After the federal supreme court had declared that the states were powerless to forbid the introduction and sale of liquors in the original package,[18] congress enacted the "Wilson Bill," by the terms of which it was provided that all liquors transported into a state and remaining there for use, should, upon "arrival" in the state, be subject to its laws as though they had been produced there, and should not be exempt from such control by reason of their being introduced in the original covers.[19] This enactment, it was held, withdrew the constitutional bar previously existing against the prohibition of the liquor traffic and subjected all imported intoxicants to state control, whether they were in the original package or not.[20] Yet this regulation, it was said, must not be a colorable exercise of the police power and a *real* exertion of the taxing power. Hence, a law was condemned even under the Wilson act because it imposed a license tax for the privilege of conducting beer depots, and applied also to those in which original packages of imported liquors were stored. As the object was to raise revenue and not to regulate the morals of the community, the enactment was held void.[21]

8. *When Goods May be Said to Have "Arrived" Under the Provisions of the "Wilson Act.*—The word "arrive," employed in the Wilson act, has occasioned frequent litigation. Not until the "arrival" of the imported goods within the state, can the latter exercise its police power upon them. Therefore it cannot meet them at its borders and forbid their passage of the boundary line, for this would allow its laws an extraterritorial force, and is not justified by the act of congress before mentioned.[22] Even if the goods in their original receptacles have been brought to their destination at a wharf but are not yet unloaded from the vessel, they are protected from state regulation.[23] This term "arrive" indicates that the interstate transit has ceased; not that the goods have entered within a state, nor even that they have been unloaded from the vehicle of transportation. They must have come to rest at the place to which they were consigned, for, as said by a federal judge, "goods shipped from Virginia to Alabama cannot be said to arrive in North Carolina, South Carolina or Georgia. They 'arrive' when they reach their destination in Alabama."[24] At every point of the transit the goods are beyond state control. Hence, if they have reached the city to which the consignment is made, and the carrier's agent removes them from the station platform to a warehouse a few feet distant, the agent is not criminally liable for assisting in the introduction of liquors; for the transit was not completed until they were placed in the warehouse and had been delivered to the consignee.[25]

9. *Right of Agents to Solicit Orders for the Sale of Liquors in the Original Packages.*—Inasmuch as states may not forbid the traffic in intoxicants remaining in the original package, except by virtue of the Wilson act, and as "arrival" of the liquors appears to be a pre-requisite, under that statute, for the exercise of the police power by the state, it would follow that the latter is unable to prohibit an agent from soliciting orders for liquors to be imported in the original packages by a foreign dealer, the general rule applying that no restriction can be placed by a state upon the privilege of canvassing for orders to be filled from abroad.[26]

10. *Effect of State Dispensary Laws Upon the Sale of Liquors in Original Packages.*—The state dispensary laws have given birth to a new phase of the question respecting goods in the original parcels. By these acts the state seeks to confine the retailing of intoxicants to sales by its own agents. The courts have held that such regulations impliedly recognize liquors as lawful articles of commerce, and only attempt to limit and control their sale and use. Therefore, the state, having

[18] Leisy v. Hardin, 135 U. S. 100; Bowman v. Chicago Co., 125 U. S. 465.

[19] 26 U. S. Stat. at Large, 313.

[20] *Re* Spickler, 43 Fed. Rep 653; *Re* Van Fleet, 43 Fed. Rep. 761; *In re* Rahrer, 140 U. S. 545.

[21] Pabst Brewing Co v. Terre Haute, 98 Fed. Rep. 330.

[22] *Ex parte* Edgerton, 59 Fed. Rep. 115; *Ex Parte* Jervey, 66 Fed. Rep. 957.

[23] Jervey v. The Carolina, 66 Fed. Rep. 1013.

[24] *In re* Langford, 57 Fed. Rep. 570; Rhodes v. Iowa, 170 U. S. 412.

[25] Rhodes v. Iowa, 170 U. S. 412.

[26] Welton v. Mo., 91 U. S. 275; Walling v. People, 116 U. S. 446; Robbins v. Shelby Dist., 120 U. S. 489; Corson v. Md., 120 U. S. 502; Asher v. Texas, 128 U. S. 129; Brennan v. Titusville, 153 U. S. 289.

passed a dispensary law, may not forbid the introduction of intoxicants by an importer, if his goods are, upon their arrival, placed in storage until they are sold by him in the original receptacles;[27] and agents of foreign dealers cannot be prevented from taking orders within the state from patrons who purchase the imported liquors for their own consumption.[28] Even where such restrictions are laid upon the state, it may nevertheless regulate the time, place and quantity of sales of liquors, both domestic and in the original imported packages, under its power as *parens patriæ*.[29]

11. *Original Packages as a Cloak for Fraud and Imposition.* — Under the same authority the state possesses extensive powers to guard its inhabitants from fraud and imposition; nor can the wrong-doer secure immunity from punishment by clothing himself with the constitutional right to import his spurious products in original parcels.[30] The state legislatures have savagely attacked the introduction of oleomargarine, justifying their action under this right of guardianship over the welfare of their inhabitants. The result of the adjudicated cases respecting such acts is that if the imported article is colored in imitation of genuine butter, its introduction and sale, in broken or original packages, may be absolutely forbidden, since otherwise frauds might readily be perpetrated upon purchasers who ask for and pay the price of butter, and receive beef tallow in return.[31] As said in the case of *In re* Schleitlin, *infra*, "It simply singles out one color and enacts that that color, because of the likelihood that its use would deceive the unwary into purchasing what they do not desire, shall be prohibited." If, on the other hand, the prohibitory legislation is leveled against all oleomargarine, whether colored in a manner to deceive the public or not, it is invalid so far as importations in the original packages are concerned, for congress has considered it a legitimate article of commerce, and it thereby becomes entitled to the securities guaranteed by the constitution;[32] and this is true, although the law does not, on its face, forbid the importotion; if its effect is prohibitory, as where it requires that all oleomargarine shall be colored a bright pink or shall be impregnated with a revolting odor or put up in a disgusting form, the law is invalid.[33]

12. *Right of State to Inspect Goods Shipped in Original Packages.* — Upon the same principle, that the people through their legislature may protect themselves from imposition, laws have been upheld which provide for the inspection of commercial fertilizers,[34] and coal in barges,[35] although such enactments subject goods in the original packages to burdensome restrictions.

13. *Right of State to Tax the Sale of Goods in Original Packages.*—How far the state may impose licenses upon the sale of goods remaining in the original package, or tax the goods themselves, is a question not clearly settled by the decisions. It is generally averred that a license to sell goods imported only for sale is virtually a tax upon the articles themselves.[36] Hence, if the states cannot impose a license for the privilege of selling merchandise brought from another state and held in the original packages, neither can they tax such goods. In neither instance can the state select one class of products and, without specially designating them as imports, tax them or license their sale, if the practical effect of such license or tax be to discriminate against the productions of another state or section of the country. The courts are not bound by the letter of the law; they may observe its probable operation and effect, and by the latter is to be determined whether the license or tax is an invalid interference with interstate commerce.[37] Thus, if Massachusetts imposes a heavy license fee upon all growers, manufacturers and importers of tobacco, or if South Carolina should subject all cotton cloth to special taxation, the laws would be invalid; for, although they are apparently non-discriminating and lay no heavier burden on domestic

[27] Moore v. Bahr, 82 Fed. Rep. 19.
[28] *Ex parte* Loeb, 72 Fed. Rep. 657.
[29] Jacobs v. Pharmacy Co., 89 Fed. Rep. 244.
[30] Arbuckle v. Blackburn, 113 Fed. Rep. 616.
[31] Armour Packing Co. v. Snyder, 84 Fed. Rep. 136; *In re* Schleitlin 99 Fed. Rep. 272; Plumley v. Mass., 155 U. S. 461; *Contra*, *In re* Worthen, 53 Fed. Rep. 467; *In re* Brundage, 96 Fed. Rep. 963.
[32] *In re* Gooch, 44 Fed. Rep. 276; *In re* McAllister, 51 Fed. Rep. 282; Schollenberger v. Penn., 171 U. S. 1.
[33] Collins v. N. Y., 171 U. S. 30; *Contra*, State v. Myers, 42 W. Va. 822.
[34] Patapsco Guano Co. v. N. Car., 171 U. S. 345.
[35] Pittsburg Coal Co. v. La., 156 U. S. 590.
[36] Brown v. Md., 12 Wheat. 419.
[37] Collins v. N. Y., 171 U. S. 30; American Co. v Board, 43 Fed. Rep. 609, 17 L. R. A. 179.

tobacco or cotton cloth than upon those introduced in the original package, yet the practical operation of such laws would be to throw all the burden on the importer and drive his goods from the state, since Massachusetts raises no tobacco and South Carolina has but little domestic cotton cloth.[38] This objection does not lie against a tax on goods or a license for their sale, where there is no evident or covert intent to drive interstate products out of the local market. If the burden falls equally upon domestic and foreign goods, and there is no real discrimination, there is no reasouwhy a merchant who has millions of dollars invested in wares brought from other states and remaining in their original parcels should wholly escape taxation while his neighbor, whose stock consists altogether of domestic merchandise, must submit to a tax. Hence it is held that coal brought from a sister state in barges, having reach its destination and being put up for sale, is taxable as part of the property within the state, although it has not yet been sold and is in the original receptacles.[39]

A similiar rule is applied to a license fee exacted for making sales of goods, even if they remain in the original packages.[40] If the goods be brought from a foreign country, in distinction from a sister state, and are yet separate from the mass of property within the state, they cannot be taxed; but this rests upon the ground that they are imports, while goods from other states are not; and no state may levy a duty on "imports," in the strict sense.[41] A tax of a different character is to be discriminated from the above, namely, one imposed upon the capital of a merchant invested in his business. Even if his stock consists of nothing save imported goods, remaining in the original packages, the tax is valid, as it is levied not on the goods themselves nor on the privilege of selling them (though if it were it might be valid, as shown above), but is upon the capital invested.[42]

14. *Theory of the Original Package Decisions.* —From the above cases, which involve the introduction of goods contained in the original receptacle, are to be clearly distinguished those decisions overthrowing legislation which discriminates against foreign goods. Though the importations may not be considered "original" (as where they are packed in small bundles adapted to the retail rather than to the wholesale trade, or where the foreign goods have become part of the mass of property within the state), they cannot be subjected directly or indirectly to prejudicial burdens imposed on the ground that they are imported products.[43] On the other hand, that there is no discrimination against the goods of other states is not enough to validate all regulations by a particular state; for if there is an unjustifiable burden imposed on merchandise in the original package, then the discriminating feature becomes inconsequential. It is on account of the discrimination against external products rather than on the theory that original packages are concerned, that the states in which dispensary acts exist, are not allowed to forbid the importation of intoxicants by an inhabitant for his own consumption, for this would favor domestic at the expense of foreign liquors,[44] and on the same ground, residents who wish to import liquors for their own use cannot be made to notify the state officers of their intent and obtain a certificate respecting the purity of the imported goods.[45] If no partiality toward domestic products is involved in such acts they are held valid, although the officers charged with their execution, may, in the exercise of their discretion, give a preference to local manufacturers.[46] From an examination of the authorities cited, the tendency of the law is seen to be to enlarge the scope of state

[38] American Co. v. Board, 43 Fed. Rep. 609, 11 L. R. A. 179; *Re* Wilson, 48 L. R. A. 417, 60 Pac. Rep. 73 (N. Mex.); Pabst Brewing Co. v. Terre Haute, 98 Fed. Rep. 330; *Contra*, see Preston v. Finley, 72 Fed. Rep. 850.

[39] Pittsburg Coal Co. v. Bates, 156 U. S. 577; *Ex parte* Brown, 48 Fed. Rep. 435; Brown v. Houston, 114 U. S. 622.

[40] Woodruff v. Parham, 8 Wall. 123 (license); Hinson v. Lott, 8 Wall. 148 (tax); State v. Wheelock, 95 Iowa, 577, 30 L. R. A. 429, 64 N. W. Rep. 620 (license); Racine Co. v. McCommons, 111 Ga. 526, 51 L. R. A. 134, 36 S. E. Rep. 866 (license). And see Coe v. Errol, 116 U. S. 517, semble. (Tax). But see *contra*, *in re* Minor, 69 Fed. Rep. 233.

[41] Brown v. Md., 12 Wheat. 425; Cook v. Pa., 97 U. S. 566; May v. New Orleans, 178 U. S. 496.

[42] Oliver Co. v. Speed, 87 Fed. Rep. 408.

[43] Spellman v. New Orleans, 45 Fed. Rep. 3; Minn. Brewing Co. v. M'Gillwray, 104 Fed. Rep. 258; Voight v. Wright, 141 U. S. 62; *Re* Saunders, 52 Fed. Rep. 802, 18 L. R. A. 549.

[44] *Ex parte* Loeb, 72 Fed. Rep. 657; Scott v. Donald, 165 U. S. 58.

[45] Vance v. Vandercook Co., 170 U. S. 438.

[46] Vance v. Vandercook Co., 170 U. S. 438.

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powers over goods imported in the original package and to restrict the application of the rule first above stated, that silence on the part of congress is equivalent to an express command for the states to refrain from regulating or in anywise impeding interstate traffic.

HENRY M. DOWLING.

Indianapolis, Ind.

RAILROADS—NUISANCE IN DELAYING DELIVERY OF EXPLOSIVES.

FT. WORTH & D. C RY. CO. V. BEAUCHAMP.

Supreme Court of Texas, May 26, 1902.

Where a railroad company, by failing to use ordinary care, allows a car of explosives to be unnecessarily or unreasonably delayed at a station, or fails to use ordinary care in keeping or caring for such car, it creates a nuisance rendering the company liable for damages resulting to adjacent property from an explosion thereof.

WILLIAMS, J.—This case comes before us upon questions certified by the court of civil appeals for the second district. The action was begun by appellee to recover of appellant for damages done to appellee's residence by an explosion of dynamite or powder in a car belonging to appellant. The facts found by the trial judge, and his conclusions therefrom, are as follows: "(1) I find that on the 5th day of April, A. D. 1901, the plaintiff resided in Montague county, Texas, and was the owner of a tract of land, with the residence house thereon, situated in the suburbs of the city of Bowie, in said county. (2) That on and prior to the said 5th day of April the defendant was a railway corporation owning and operating a line of its road through said city of Bowie. (3) That on the 3d day of April, 1901, the Chicago, Rock Island & Texas Ry. Co., which company also owned and operated a line of its road through said city of Bowie, and was a connecting carrier with defendant, brought into the vicinity of said city a car containing 28,200 pounds of blasting powder and giant powder, and delivered to defendant said car of powder on said day, taking its receipt therefor, and left the said car upon a transfer switch in the charge and under the control of the defendant. (4) That said car of powder was contained in a single wooden box car, closed up, with no covering or sheeting of iron or other metallic material, but was otherwise of comparatively recent construction, and was in good condition and not differing from those in ordinary use by railway companies generally; that the manner of the storing of said powder within said car was not shown. (5) That from said date of the receipt of said car until the date of the explosion, as hereinafter found, it was permitted by defendant to stand upon its transfer switch connected with two empty box cars to the north or west, and a car of hay immediatvly to the south or east, and yet another car, with contents not shown, to the east or south; that the car immediately to the north or west of said car of powder and connected therewith was an empty box car in which was some hay from Kaffir corn, scattered about the floor, the door of which car was standing open. (6) That said transfer upon which said cars stood was of length sufficient to hold thirteen cars, and was situated at the intersection of the said C., R. I. & T. road with the defendant, which said intersection was upon the line of the incorporation of said city, but the switch on which the car was standing was outside of the corporation: that said cars stood about the center of said switch and within a radius of one-fourth mile of some forty residence houses, and within a radius of three-fourths of a mile of the greater portion of the residence and business houses of said city, said city having a population of about twenty-six hundred inhabitants; that a public road or highway ran within a few feet, and the main line of the defendant within about twenty feet, and that of the C., R. I. & T. Ry. within about two hundred feet, of where the said car of powder was permitted to stand, and, further, that there were scheduled to pass said point, upon said two roads, sixteen trains daily, besides extras. (7) I find that defendant placed no guard or watch about said car of powder, that its contents was known to the agent who receipted for said car, and that there was placarded upon the walls of said car the following, viz: 'High Explosives. Handle with Care;' and, further, I find that the locality where said car was permitted to stand was one frequented by tramps, who were in the habit of building fires, and entered into the empty cars left standing thereabouts. I find that on as many as two occasions, while said car was upon said switch, an employe of defendant inspected said cars, the last time being about nine o'clock a. m. on the morning of the explosion, as hereinafter found, going within two hundred feet for such purpose. (8) I find that defendant permitted said car of explosives to stand, situated as hereinbefore stated, upon said switch, from the date of its receipt till about 9:47 a. m. of the 5th day of April, at which time it exploded; that there were two scheduled freight trains daily upon the line of defendant, and that trains passed in the direction said car was billed to go after its receipt and prior to its explosion; and that other cars placed upon said switch on the day preceding said explosion were by defendant picked up and carried away in the direction in which said car of explosives was billed. (9) That on the morning of the 5th of April, about thirty minutes before the final explosion, a fire was discovered to have originated in the empty box car immediately to the north or west of said car of explosives; that at said time the doors upon both sides of said cars were open; that the fire was communicated from said car to the wooden car containing said explosives, violently exploding the same and injuring and damaging the property of plaintiff as hereinafter

found. (10) I find that the place where said car was left standing and where said explosion occurred was distant from the property of plaintiff about eight hundred yards. (11) I further find that, by reason of said explosion, plaintiff's property described in his petition was injured and damaged in the sum of nine hundred and ninety-five dollars; that it will cost the said sum of nine hundred and ninety-five dollars to repair the said injuties occasioned by said explosion, and that plaintiff's said property is worthless by said amount by reason of said explosion and said injuries, and that no portion of said amount has ever been paid to plaintiff. (12) I find also, as a matter of fact, that the receiving and storing of such quantity of explosives in the manner, for the time, and in the locality as shown, by the defendant constituted a public and private nuisance (13) I also find as a fact that defendant was guilty of negligence in receiving, storing and handling said car of explosives as it did, and in permitting said explosion, and that said negligence was the immediate and proximate cause of said explosion and injuries, and but for which negligence said explosion and injuries would not have occurred."

The court of civil appeals propounds the following questions: First, whether or not the facts found by the trial judge warranted the legal inference of nuisance. Second, whether or not those facts afford any evidence of negligence. Third, whether or not, if the acts of defendant constitute negligence, the damage to appellee was the proximate result thereof.

The answer to the first question, we think, will be found by a decision of the second; for it is not contended, and cannot be held, that the mere fact that a railroad company has in its cars, for transportation, explosives of this character makes it guilty of creating a nuisance, either public or private, even though danger to persons or property along its line be necessarily incident to such transportation. Such articles are property useful for some purposes, and common carriers are under legal obligation to receive and properly carry them. Walker v. Railroad Co. (Iowa) 33 N. W. Rep. 224. In this the case of a common carrier differs from those of owners of mills, magazines, or other places where such explosives are voluntarily manufactured or stored in such way as to unreasonably endanger the persons or property of the public or of neighboring property owners. Such places are generally held to be nuisances, the mere existence and maintenance of which render their owners liable for damages resulting from explosions, without regard to the degree of care exercised in keeping them. Wier's Appeal, 74 Pa. 230; Cheatham v. Shearon, 1 Swan, 213, 55 Am. Dec. 734; Myers v. Malcolm, 6 Hill 292, 41 Am. Dec. 744; Heeg v. Licht, 80 N. Y. 579, 36 Am. Rep. 654. But a railroad company must carry freight of this character over its road, and such dangers as necessarily result to others from the proper and reasonable performance of this duty must be borne by them as an unavoidable incident of the proper transaction of legitimate business. But a nuisance may result from the negligent exercise of a right or performance of a duty with respect to one's own property or property in his charge. 1 Wood, Nuis. § 4 and notes. A nuisance to others may thus arise from the careless discharge by a common carrier of its duty in the transportation of such dangerous articles as are here in question. The right to carry them does not include the right to subject persons along the route to dangers from explosions for a longer time or in a greater degree than is reasonably necessary to the proper performance of the carrier's duty. This is an obvious deduction from plainest principles. If, therefore, the car was unnecessarily and unreasonably delayed at the place where it exploded, so as to subject plaintiff's property to such danger for a longer time than would have attended a transportation made with reasonable dispatch, such keeping of the car at that place was a nuisance. The case thus supposed would not differ essentially from those of other keepers of dangerous explosives; or if ordinary care was not exercised by the appellee in keeping and caring for the car, and the absence thereof gave rise to a degree of danger such as would have been avoided by the exercise of it, such negligence would make the presence of the car so negligently kept a nuisance. Ordinary care is the measure of appellee's duty, but, of course, the degree of diligence and the nature of the precautions to be used depend upon the nature and circumstances of the situation and the danger to be avoided. The finding of the trial court that there was such negligence will, if supported by evidence, sustain its conclusion that the car, under the circumstances stated, constituted a nuisance. We are of the opinion that there was evidence from which the court could properly conclude that, considering the very dangerous contents of the car, there was negligence both in leaving it so long at that place and in not properly caring for it while there. No reason for the delay is shown, and the circumstances stated by the judge might have been held by him sufficient to call for a showing on the part of the defendant of any circumstances which made the delay necessary or reasonable, and to justify the conclusson, in the absence of such a showing, that there were none. This, and the further question as to the precautions which ordinary prudence required in keeping the car, are questions of fact which this court cannot resolve. We merely hold that there was evidence tending to sustain both conclusions of the trial judge, and this answers the first and second questions as far as we can answer them.

NOTE.—*Liability for Injuries Resulting from the Possession, Use and Shipment of Explosives.* — The law relating to explosives is necessarily of modern origin. The wisdom of the ancients cannot be of much assistance on this question for the simple and sufficient reason that the most common and dangerous explo-

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sives of our day were unknown to them. The most terrible of all explosives, nitro-glycerin, did not come into commercial use until 1868. Since then this and other methods of explosion have become absolute necessities of commerce. They are used in a great variety of ways to assist man in his control and use of the elements of nature. Their use and manufacture are therefore not to be attended with a liability so strict or unreasonable as to check the development of their possibilities in science or commerce, nor, on the other hand, is encouragement to go so far as to endanger the lives and property of those having no direct interest in them.

Liability Attending the Mere Possession of Explosives.— An explosion which is the result of unavoidable accident is not actionable. This rule rests upon the doctrine that there is nothing wrong in the absence of statute in the mere possession of an explosive substance. Thus the keeping of a quantity of dynamite in a store for the purpose of trade is not a nuisance *per se*, but is a question for the jury to determine under all the circumstances, and hence, in an action by a property owner against an adjoining owner for damages to his property by the explosion of dynamite on the latter's premises, used as a hardware store, it was error to exclude evidence as to the general custom and usage in regard to keeping dynamite in hardware stores. Barnes v. Lettlemoyer (Tex. 1901), 62 S. W. Rep. 111. The late case of Bradford Glycerin Co. v. Manufacturing Co. (Ohio 1899), 52 N. E. Rep. 528, seems to state a contrary doctrine. In that case, the court said: "Nytro-glycerin is a substance usually recognized as highly explosive and dangerous, the storage of which at any place is a constant menace to the property in that vicinity; and one who stores it in his own premises is liable for injuries caused to surrounding property by its exploding, although he neither violates any provision of the law regulating its storage nor is chargeable with negligence contributing to the explosion." This decision is based on the famous English case of Fletcher v. Rylands, announcing the formula that when one brings upon his land anything liable to do mischief he must keep it in and prevent mischief at his peril. The rule announced by this case, however, is not accepted by American authorities, and therefore the Ohio decision based thereon is out of accord with the weight of American authority. Thus where a powder magazine was ignited by the criminal act of a third party the owner was not liable. Collerd v. McAndrews, N. J. L. 49; Sofield v. Sommers, 9 Ben. (U. S.) 526. Nor is such a magazine a nuisance, when its erection was originally in a sparsely settled community which, afterward became thickly populated. Quckashinsky v. Coal Co.,199 Pa. St. 515, 49 Atl. Rep. 308. The general rule,therefore, in this country is contrary to the doctrine announced in Fletcher v. Rylands, and holds that where the keeping of a thing likely to create mischief, as the storage of oil, gas, or explosive substances, is lawful and does not therefore constitute a nuisance, no damage resulting there from will sustain an action except upon proof of negligence. Dumesnil v. Dupont, 18 B Mon. (Ky.), 800, 68 Am. Dec. 750; Cosulich v. Oil Co., 122 N. Y. 118, 19 Am. St. Rep. 475; Everett v. Tunnel Co., 23 Cal. 225; Marshall v. Wellwood, 38 N. J. L. 339; Kinney v. Koopman, 116 Ala. 310. Of course, if the storage of explosive substances be in such a locality or in such a manner as to constitute a nuisance, the proprietor thereof is liable for the results of an explosion independent of his negligence. Prussak v. Hutton, 30 N. Y. App. D. 66; Wilson v. Mfg. Co., 40 W. Va., 413, 52 Am. St. Rep. 890; Hazard Powder Co. v. Volger, 58 Fed. Rep. 152; Andrews v. Collerd, 42 N. J. L. 189; Wier's Appeal, 74 Pa. St. 230; State v. Paggett, 8 Wash. 579; Commings v. Stevenson, 76 Tex. 642. Where the storage of explosive substances is in violation of some ordinance, it is *per se* a nuisance and the owner is liable. Laflin Powder Co. v. Tearney, 131 Ill. 322, 19 Am. St. Rep. 34, 7 L. R. A. 262; Hazard Powder Co. v. Volger, 58 Fed. Rep. 152; McAndrews v. Collerd, 42 N. J. L. 189, 36 Am. Rep. 508.

Liability of Shipper or Consignor of Explosive Substances.—Where one ships goods of a dangerous character, such as nitro-glycerin or gunpowder, it is his duty to give notice of their dangerous nature to the carrier, and the omission to perform that duty is an act of negligence which renders the shipper liable for the consequences. Boston, etc., R. R. v. Shanley, 107 Mass. 568; Barney v. Burnstenbinder, 64 Barb. (N. Y.) 212;Standard Oil Co. v. Tierney, 92 Ky. 367, 17 S. W. Rep. 1025, 14 L. R. A. 677, 36 Am. St. Rep. 595. Thus, in the last case cited a quantity of naphtha was placed in a car by a shipper and billed as "carbon oil." Across the heads of the barrels was branded the words "unsafe for illuminating purposes." On the trip the conductor entered the car with a lantern to stop a leak, and while so engaged was injured by an explosion. The court held that the shipper was bound to so mark the barrels that the *employees* of the carrier, in the exercise of ordinary prudence, would ascertain the explosive nature of the goods; and whether the brand is sufficient for that purpose is to be decided by the jury.

Liability of Carrier of Explosive Substances.—The leading authority on this point is that familiarly known as "The Nitro-Glycerin Case," 82 U. S. 524. In that case the defendant carrier received a box of nitro-glycerin without inquiring or receiving any knowledge as to its contents. On the arrival of the box at its destination, it was found to be leaking, and according to its custom the carrier had it transferred to its warehouse for examination. Here it exploded and wrecked considerable property in the vicinity, for which suit was brought against the carrier. In denying the liability of the carrier in this instance, the court held generally that carriers are not chargeable, in cases free from suspicion, with notice of the contents of packages carried by them; nor, in such cases, are they liable in damages for handling them in the same manner as they handle other freight. And, even where the carrier is fully aware of the dangerous and explosive character of goods received by him he is not liable for the results of an explosion without proof of negligence on the part of the carrier. Walker v. Railroad, 71 Iowa, 658, 33 N. W. Rep. 224. In this case a car of dynamite standing in the yard of the railroad company, awaiting the orders of its owner, took fire and exploded. The car was standing on a switch, but there was no evidence that the dynamite was not properly protected, nor that the damage would have been less if the car had been standing at any other place in the yard. Where, however, any act of negligence on the part of the railroad, such as delay, can be shown to be the proximate cause of the explosion, it is liable. Thus, a railroad company, on whose tracks a collision has occurred between a train and a number of tank cars containing petroleum, and the oil set on fire by the collision, and which neglects for two hours two remove the other cars, in consequence of which they also explode, is liable to one who is injured by

such explosion. Henry v. Railroad, 67 Fed. Rep. 426. So also is a railroad liable for defective or negligent storage of explosives in its depot or warehouse. Denver, etc., R. R. v. Conway, 8 Colo. 1, 5 Pac. Rep. 142, 54 Am. Rep. 537.

Liability for the Illegal or Negligent Sale of Explosives.—A person licensed to sell gunpowder or other explosive is liable for the consequences of selling it to a person whom he knows to be incapable of taking proper care of it, provided such negligent sale can be said to be the proximate cause of the injury resulting from the explosion. Carter v. Towne, 98 Mass. 567, 96 Am. Dec. 682. But a seller is not liable for selling an explosive substance where the buyer is fully aware of its dangerous qualities, or is put on his guard by the warning of the seller or by the label or brand upon the package containing it. Socola v. Chess-Carley Co., 39 La. Ann. 344. Of course, where the sale of an explosive is in violation of an express statute or ordinance, the seller is liable for the results of an explosion, and a right of action in such case extends even to one to whom a purchaser from such seller may have given or resold it. Wellington v. Downer Kerosene Oil Co., 104 Mass. 64.

Liability for Injuries Resulting from the Discharge of Fireworks.—Negligence in the discharge of fireworks renders those concerned either directly or indirectly in their explosion liable for injuries done to an innocent person. Jenne v. Sutton, 43 N. J. L. 257, 39 Am. Rep. 578; Colvin v. Peabody, 155 Mass. 104, 29 N. E. Rep. 59. And a minor is not excused from liability. Bradley v. Andrews, 51 Vt. 530; Cocklin v. Thompson, 51 Vt. 530. Neither is a father or schoolmaster excused for permitting his children to negligently explode fireworks. Mullins v. Blaise, 37 La. Ann. 92; King v. Ford, 1 Stark, 421, 2 E. C. L. 163. The mere permission, however, to use one's premises for the discharge of fireworks does not render such licensor liable. Waixed v. Harrison, 37 Ill. App. 323. The discharge of mortars in too small an enclosure for perpendicular firing, in addition to evidence that bombs when carefully fired will not fall on spectators, renders the one so discharging this variety of fireworks liable for injuries resulting from the explosion of a bomb among a crowd of spectators. Colvin v. Peabody, 155 Mass. 104, 29 N. E. Rep. 59. But the careful discharge of fireworks from a veranda of a private residence over the heads of people on the sidewalk is not unlawful in the absence of statute or ordinance forbidding it. Dowell v. Guthrie, 99 Mo. 653, 12 S. W. Rep. 900, 17 Am. St. Rep. 598. The act of exploding fireworks in the public street, however, is unlawful, and if any injury results the wrong-doer is liable therefor. Conklin v. Thompson, 29 Bart. (N. Y.) 218.

Liability for Injuries from Blasting.— The general rule on this particular phase of this question is that where one engaged in blasting injures the adjoining property of another, he is liable without reference to his exercise of care and skill in doing the work. McAndrews v. Collerd, 42 N. J. L. 189, 36 Am. Rep. 508; Monro v. Reclamation Co., 84 Cal. 515, 24 Pac. Rep. 303, 18 Am. St. Rep. 248; Wright v. Compton, 53 Ind. 337; Whitehouse v. R. R., 52 Me., 208; Hunter v. Farren, 127 Mass. 481, 34 Am. Rep. 423; Beauchamp v. Mining Co., 50 Mich. 163, 45 Am. Rep. 30; Simmons v. McConnels, Admr., 86 Va. 494, 10 S. E. Rep. 838. A case which seems to announce a different rule is that of Klepsch v. Donald, 4 Wash. 436, 30 Pac. Rep. 991, 31 Am. St. Rep. 936, where the court held that where the blasting is done in a locality not populated so as to constitute such blasting a nuisance, a person so blasting is not liable except for negligence. This same case, however, came before the Supreme Court of Washington again, when it was held that where an explosive used in blasting destroys all evidence of its management, evidence that a person was killed by a rock which was hurled horizontally 940 feet, or three times the usual distance, by a blast, is *prima facie* evidence of negligence in the management of the blast. Klepsch v. Donald, 8 Wash. 162, 35 Pac. Rep. 621.

ALEXANDER H. ROBBINS.

HUMORS OF THE LAW.

The "Justice Who Threw in a Spoon."—Judge Arthur Franklin Love, who died at his home in Macon, Mo., on June 10, was frequently called into requisition to tie the matrimonial knot, and was known as the "justice who threw in a spoon." His favorite "ad." was as follows: "All couples ready to leap into the matrimonal arena, calling on A. F. Love, office in Macon Times Building, and having their ceremony (short and without frills) performed for $2, will be given free a solid silver spoon, with the bride's name and date of the beginning of her happiness engraved thereon."—*Law Notes.*

A struggling modest lawyer near Stroudsburg, this state, received a call from a well-to-do farmer who was in need of professional advice concerning his rights which he thought ignored by a section gang on the D. L. & W. R. R. The lawyer looked up the statutes, told the farmer exactly what he should do, and when asked as to the fee replied:

"Well, let's call it just $3."

The farmer passed over a $5 bill which seemed to embarrass the lawyer, who searched through his pockets and the drawer of his desk. Then he pocketed the $5, reached a digest, sat down and remarked, "I guess neighbor, I'd best give you $2 worth more advice.—*Philadelphia Times.*

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1. ABATEMENT AND REVIVAL — Delay in Delivering Telegram.—Under Code, § 1491, an action against a telegraph company to recover for mental anguish caused by its delay in delivering a telegram dies with the person.—Morton v. Western Union Tel. Co., N. Car., 41 S. E. Rep. 484.

2. ABSENTEES—Attachment.—The fee of a curator appointed to represent defendant in attachment may be increased to an amount corresponding with the services rendered, under REV. St. § 108.—Watt v. Williams, La., 32 South. Rep. 85.

3. ACCIDENT INSURANCE—Change of Occupation.—An accident policy held not to have been avoided on the ground that the insured at the time of his death was engaged in adventures into wild and uninhabited or uncivilized regions.—Ætna Life Ins. Co. v. Frierson, U. S. C. C. of App., Sixth Circuit, 114 Fed. Rep. 56.

4. ADJOINING LANDOWNERS—Blasting.—Adjoining lot owners in a city held to have equal rights as to blasting on their respective lots.—De Carvajal v. Young Men's Christian Assn., 76 N. Y. Supp. 474.

5. AMENDMENTS—Jurisdiction.—Jurisdiction must affirmatively appear at every stage of a case, and the court is without authority to permit amendments to supply essential jurisdictional averments in the bill.—Dickinson v. Consolidated Traction Co., U. S. C. C., D. N. J., 114 Fed. Rep. 232.

6. APPEAL AND ERROR—Bill of Exceptions.—The decision of the trial court in overruling a motion will be affirmed, though the motion is incorporated in the bill of exceptions, when the record fails to set out the evidence introduced in support of it.—Hamilton v. Maxwell, Ala., 32 South. Rep. 13.

7. APPEAL AND ERROR—Domicile.—Appellee should be cited personally when he resides in the state; but if he cannot be found, and has no domicile, citation served on his attorney will save the appeal from dismissal.—Levy v. Levy, La., 32 South. Rep. 117.

8. APPEAL AND ERROR—Injury of Passenger.—The refusal of a trial judge to direct a verdict for defendant on the ground that a part of the plaintiff's testimony was improbable is not a ground for reversal of the judgment by an appellate court.—Texas & P. Ry. Co. v. Gardner, U. S. C. C. of App., Fifth Circuit, 114 Fed. Rep. 186.

9. APPEAL AND ERROR—Presumption.—In the absence of a showing by the judgment record of the sustaining of a demurrer to the petition, it will be presumed on appeal that such was not the case.—Robinson v. Chamberlain, Tex., 68 S. W. Rep. 209.

10. APPEAL AND ERROR—Questions Considered.—An objection to the rejection of evidence, does not authorize a review of such questions on appeal, if no offer to prove was made prior to the ruling on the objection to the question.—Board of Comrs. of Fulton County v. Gibson, Ind., 63 N. E. Rep. 982.

11. APPEAL AND ERROR—Motion for Nonsuit.—A defendant, whose motion for a nonsuit was overruled, but who did not appeal, held not entitled to the benefit of such motion on an appeal by plaintiff.—Fritz v. Southern Ry. Co., N. Car., 41 S. E. Rep. 532.

12. ASSUMPSIT, ACTION OF—Building Contract.—Where a building contract in writing is fully performed, except as to payment, the builder may sue therefor in general *assumpsit*, and especially is this true when the contract only fixes a maximum price.—Board of Comrs. of Fulton County v. Gibson, Ind., 63 N. E. Rep. 982.

13. ATTACHMENT—Wrongful Attachment.—In an action for wrongful attachment, the record of motions by plaintiff in the original suit to substitute the writ of attachment and for an order directing the sheriff to sell the property levied on, and the order of the court thereon, held admissible.—Hamilton v. Maxwell, Ala., 32 South. Rep. 13.

14. ATTORNEY AND CLIENT—Action for Fees.—Conduct of an attorney in consenting to a record entry showing the discharge of his client on *habeas corpus* held not negligence on the part of the attorney which could be recouped by the client in a suit by the attorney for fees.—Keith v. Marcus, Mass., 63 N. E. Rep. 924.

15. BANKRUPTCY—Enjoining Suit in State Court.—A court of bankruptcy will not enjoin further proceeding in an action of replevin in a state court by a third person to recover property which was in possession of the bankrupt when the petition was filed against him, but which was taken by the state court on a writ of replevin before any action had been taken on such petition.—*In re* Wells, U. S. D. C., 114 Fed. Rep. 222.

16. BANKRUPTCY—Incriminating Questions.—A bankrupt on his examination cannot be compelled to answer questions over his claim of privilege on the ground that the answer would tend to incriminate him, where the situation is such as seems to put him in hazard.—*In re* Shera, U. S. D. C., S. D. N. Y., 114 Fed. Rep. 207.

17. BANKRUPTCY—Partnership.—Bankr. Act, § 5b, providing that if one partner only is adjudged bankrupt, the partnership property shall not be administered in bankruptcy, except by consent of the other partners has no application to case where the other partners have sold out to the bankrupt and retired from the firm.—*In re* Denning, U. S. D. C., 114 Fed. Rep. 219.

18. BANKRUPTCY—Preference.—The receipt by a creditor of payments on an account current, followed by new credits, for which the creditor is not paid, and which equals or exceeds in amount the payments, does not constitute a preference which the creditor must surrender, under Bankr. Act 1898, §§ 57g, 60a.—Kimball v. E. A. Rosenham Co., U. S. C. C. of App., Eighth Circuit, 114 Fed. Rep. 85.

19. BANKS AND BANKING— Deposit of Court Funds. — Where a bank is in the hands of a receiver, a demand for payment of a deposit due by the bank is properly made by drawing a check on the bank and demanding payment thereof of the receiver.—Wylie v. Commercial & Farmers' Bank, S. Car., 41 S. E. Rep. 504.

20. BANKS AND BANKING — Liabilities Inter Se. — The drawer of a check is not bound to so prepare the check that nobody else can successfully tamper with it. — Critten v. Chemical Nat. Bank, N. Y., 63 N. E. Rep. 969.

21. BANKS AND BANKING—Payment of Altered Checks. —Liability of bank for the payment of raised check before an account was balanced is not affected by the failure of the depositor to subsequently discover the alterations.—Critten v. Chemical Nat. Bank., N. Y., 63 N. E. Rep. 969.

22. BILLS AND NOTES— Consideration.— The cancellation of a pre-existing debt is equally as valid and sufficient consideration for the transfer to the creditor of a bill or note of a third party as a payment of cash therefor.—Levy & Cohn Mule Co. v. Kauffman, U. S. C. C. of App., Fifth Circuit, 114 Fed. Rep. 170.

23. BILLS AND NOTES — Order of Proof. — Defendant held not required to prove that plaintiff was not a *bona fide* purchaser for value, before introducing proof of fraud in the inception and delivery of a note.—Savage v. Goldsmith, Mass., 63 N. E. Rep. 918.

24. BILLS AND NOTES — Outstanding Demand Note.—Contention that fact that a demand note had been outstanding for the three months stamped it as dishonored, so as to let in any defense which would have been good as against the payee, held of no merit.—First Nat. Bank v. Mineral Farm Consol. Min. Co., Colo., 68 Pac. Rep. 981.

25. BROKERS — Commissions. — Where a real estate broker brings about negotiations between parties for an exchange of property, that the contract for the exchange is made without his knowledge does not bar his recovery of commission.—French v. McKay, Mass., 63 N. E. Rep. 1068.

26. BUILDING AND LOAN ASSOCIATIONS—Rights of Borrowing Members.—When a building association has become insolvent, a borrowing stockholder held not entitled to have sums which he has paid as dues on stock credited upon his debt.— Catlett v. United States Building & Loan Assn. Assignee, Ky., 68 S. W. Rep. 123.

27. BUILDING CONTRACT—Evidence. — A building contract must be introduced in evidence in an action by the contractor for additional work, as it may furnish evidence, not only that the work was beyond the original contract, but also of the rate for which it was to be paid for.—Board of Comrs. of Fulton County v. Gibson, Ind., 63 N. E. Rep. 982.

28. CANCELLATION OF INSTRUMENTS—Fraud. — Where the grantor in a deed which was procured by fraud is not in possession, he cannot maintain bill to cancel the deed or remove cloud. — Tredwell v. Torbet, Ala., 32 South. Rep. 126.

29. CANCELLATION OF INSTRUMENTS—Undue Influence. —Where a bill to cancel a deed on the ground that it was procured by undue influence alleges the person who exerted such influence, it is sufficient, and need not allege the mode in which such influence was exerted.—Letohatchie Baptist Church v. Bullock, Ala., 32 South. Rep. 58.

30. CARRIERS—Alighting from Moving Train. — In an action against a railroad for injuries received while alighting at a station from a train after it has started, the burden is on plaintiff to show that he was carefully trying to alight safely. — Brown v. New York, N. H. & H. R. Co., Mass., 63 N. E. Rep. 941.

31. CARRIERS—Burden of Proof.—Instruction throwing on a railroad the burden of proving that an injury to a passenger was not the result of its negligence held erroneous —Denver & R. G. R. Co. v. Fotheringham, Colo., 68 Pac. Rep. 978.

32. CARRIERS—Mental Suffering.—In an action against a railroad company for carrying a woman and children beyond their destination, resulting in no personal injury, evidence of mental suffering held properly excluded.—Smith v. Wilmington & W. R. Co., N. Car., 41 S. E. Rep. 481.

33. CARRIERS—Prima Facie Case.—A passenger makes out a *prima facie* case against the carrier when he shows an injury resulting from a defect in any of those things the carrier is bound to supply.—Davis v. Paducah Ry. & Light Co., Ky., 68 S. W. Rep. 140.

34. CARRIERS— Punitive Damages.— In an action by a passenger for a failure of a carrier to stop and take her aboard, evidence held insufficient to warrant the submission of the question of punitive damagea.—Yazoo & M. V. R. Co. v. Faust, Miss., 32 South. Rep. 9.

35. CARRIERS—Shipper's Right to Damages.—One who contracts to furnish cattle to be carried by a ship held entitled, without proof that he owns the cattle shipped, to recover stipulated damages for expenses of feed, in case of delay in sailing.—Morris v. Wilson, Sons & Co., U. S. C. C. of App., Second Circuit, 114 Fed. Rep. 74.

36. CARRIERS OF PASSENGERS—Injury of Passenger.— Evidence of a contract of carriage between plaintiff and defendant, and that plaintiff was injured while a passenger under such contract, casts the burden on defendant to show that it and its agents were without fault, or that plaintiff was guilty of contributory negligence.—Texas & P. Ry. Co. v. Gardner, U. S. C. C. of App., 114 Fed. Rep. 186.

37. CARRIERS OF PASSENGERS— Negligence. — A railroad company, operating its trains over the railroad of another by permission, is liable to its passengers for negligence of the servant of the licensing corporation. —Brady v. Chicago & G. W. Ry. Co., U. S. C. C. of App., 114 Fed. Rep. 100.

38. CHATTEL MORTGAGES—Fraudulent Conveyances.— A wholesale mercantile firm, in answer to a general inquiry from another house for information "regarding the credit, promptness, and financial standing" of a customer, is not bound to disclose its own business relations or the state of its account with such customer.— Foster v. McAlester, U. S. C. C. of App., Eighth Circuit, 114 Fed. Rep. 145.

39. CHATTEL MORTGAGES — Discharge of Lien. — The sale of mortgaged personalty without paying the debt secured by the mortgage, when the debt is not yet due at the time of the sale, is not a violation of Ann. Code 1892, § 1184.—State v. Sullivan, Miss., 32 South. Rep. 55.

40. CHATTEL MORTGAGES—Property Covered.— Where a chattel mortgage covering exempt and non-exempt property has not been recorded, the mortgagor cannot, as against creditors, require the mortgagee to first exhaust the non-exempt property. — Baughn v. Allen, Tex., 68 S. W. Rep. 207.

41. COLLISION—Tug with Tow.— The duty rests upon a steamer, having full control of its own movements, to keep out of the way of a tug, with a tow, which occupies the position of an encumbered vessel. — The Alabama, U. S. D. C., E. D. Va., 114 Fed. Rep. 214.

42. COMPROMISE AND SETTLEMENT — Consideration.— Where an agent of a life insurance company, who settles a loss, believes that misrepresentations by the insured constitutes a defense, notwithstanding an incontestable clause, the settlement for less than the face of the policy is supported by a valid consideration. — Franklin Life Ins. Co. v. Villeneuve, Tex., 68 S. W. Rep. 203.

43. COMPROMISE AND SETTLEMENT—Subsequent Action for Conversion — Compromise of account between principal and agent held not a bar to an action for conversion by the agent of property of the principal, not known at the time of the compromise by the principal. —Ballare v. Beveridge, N. Y., 63 N. E. Rep. 960.

44. CONSTITUTIONAL LAW — Failure to Deliver Telegram. — Act Feb. 20, 1901, authorizing actions against telegraph companies for mental anguish for negligence in transmitting messages, is not in violation of the fourteenth amendment of the United States constitution as class legislation. — Simmons v. Western Union Tel. Co., S. Car., 41 S. E. Rep. 521.

45. CONSTITUTIONAL LAW—Petition for Damages.—St. 1899, ch. 386, which extends the time for filing petitions for damages occasioned by the changing of grade of any railroad constructed by any company except the terminal company, is not rendered invalid by such exception.— Dunbar v. Boston & P. R. Corp., Mass., 63 N. E. Rep. 916.

46. CONSTITUTIONAL LAW — Women's Right to Sell Liquor.—A regulation denying women employment in connection with the sale of intoxicating liquors is not a denial of the equal protection of the law afforded by the fourteenth amendment of the United States constitution — City of Hoboken v. Goodman, N. J., 51 Ala., 51 Atl. Rep. 1092.

47. CONTEMPT—Sufficiency of Evidence. — Where the affidavits on motion to punish defendant for contempt are so unsatisfactory as not to enable the court to determine whether the defendant is in contempt, an order denying the motion will be reversed, and the matter sent to a referee. — Hogen v. Clark, 76 N. Y. Supp. 491.

48. CONTRACTS—Future Delivery. — An accepted offer to sell and deliver articles at specified prices during a limited time in such quantities as the acceptor may de-

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sire in his business, or without any statement of the amount or quantity, is without consideration, because the acceptor is not bound to desire any. — Cold Blast Transp. Co. v. Kansas City Bolt & Nut Co., U. S. C. C. of App., Eighth Circuit, 114 Fed. Rep. 77.

49. CONTRACTS — Intention of Parties. — Where the terms of a contract are plain and unambiguous, the intent of the parties cannot be incorporated into the contract, if not expressed therein.— Cold Blast Transp. Co. v. Kansas City Bolt & Nut Co., U. S. C. C. of App., Eighth Circuit, 114 Fed. Rep. 77.

50. CONTRACTS — Principal and Surety.—The mutual promises of several co-sureties, who pay the surety debt, to share with each other all collections made on such debt by any of them, constitute a sufficient consideration for the contract for such division.—Cramer v. Redman, Wyo., 68 Pac. Rep. 1003.

51. CONTRACTS—Services of Concubine. — A contract by which plaintiff undertook to render services as housekeeper held valid and enforceable, though the parties lived together in a state of concubinage during much of the time the services were being rendered.—Lytle v. Newell, Ky., 68 N. W. Rep. 118.

52. CONTRACTS—Validity.—A contract between a railroad company and a mill owner for the construction of a side track and switch, in consideration of the latter releasing the company from liability, held not void as against public policy.—Missouri, K. & T. Ry. Co. of Texas v. Carter, Tex., 68 S. W. Rep. 159.

53. CORPORATIONS — Dramshop Act. — Fact that the prosecuting witnesses were furnished money by citizens for the purpose of buying whiskey at a particular drug store, with a view to prosecuting the seller, and that each bought the whiskey with the money so furnished, was no defense to the prosecution for the unlawful sales.—State v. Lucas, Mo., 67 S. W. Rep. 971.

54. CORPORATIONS—Estoppel. — The vendor of stock may, by his representation or silence, estop himself from asserting against a purchaser an indebtedness of the corporation to him. — Given v. Times-Republican Printing Co., U. S. C. C. of App., Eighth Circuit, 114 Fed. Rep. 92.

55. CORPORATIONS—Limitations.—In an action in Massachusetts against a stockholder of a Kansas corporation to enforce his liability for a debt of the corporation, his right to interpose his payment of a debt of the corporation as an equitable defense is not affected by the statute of limitations of either state.—Sargent v. Stetson, Mass., 63 N. E. Rep. 929.

56. CORPORATIONS—Mortgage Given by Insolvent.—A mortgage executed by an insolvent corporation to secure an indebtedness to banks in which its directors and stockholders were stockholders, held valid, as having been given in good faith while the company was a going concern.—Chick v. Fuller, U. S. C. C. of App., Seventh Circuit, 114 Fed. Rep. 22.

57. CORPORATIONS—Preference to Director.—A director of an insolvent corporation, who has received corporate property in payment of an alleged debt, has the burden of proving the good faith of the transaction.—Pitman v. Chicago Lead Co., Mo., 67 S. W. Rep. 946.

58. CORPORATIONS—Provisions as to Sale of Stock.—A corporation by-law, precluding a sale of corporation stock without first offering it for sale to the corporation directors, operates to prevent the refusal of the corporation to transfer stock sold in violation thereof from being an actionable wrong.—Barrett v. King, Mass., 63 N. E. Rep. 934.

59. CORPORATIONS—Receivers.—That the affairs of a corporation have been irregularly settled constitutes no ground for appointment of a receiver at the instance of the state, where all debts have been paid and all parties in interest are satisfied.—State v. New Orleans Debenture Redemption Co., La., 32 South. Rep. 102.

60. COUNTIES—Indictment of Fiscal Court.—The fiscal court of a county cannot be indicted as such for failure to repair the highway, as neither the county, nor the fiscal court as its governing body, is subject to indictment.—Commonwealth v. Boyle County Fiscal Court, Ky., 68 S. W. Rep. 116.

61. COUNTIES—Jurisdiction of Court.—The county, in bringing suit, may resort to any court in the county of defendant's residence having jurisdiction of the subject-matter; Rev. St. ch. 34, § 31, merely containing restriction as to the courts in which a county may be sued.—Dandurand v. Kankakee County, Ill., 63 N. E. Rep. 1011.

62. COUNTIES—Police Jury. — Under Rev. St. § 2448, a debt contracted by a police jury in violation of its provisions is stricken with nullity and incapable of judicial enforcement.—Citizens' Bank v. Town of Jennings, La., 32 South. Rep. 66.

63. COURTS — Conflicting Terms of Court. — Even in the absence of statute, the arrival of the time for a regular term of court in one county while a criminal trial was going on at an adjourned term in another county, presided over by a special judge, would not terminate the special term. — Wheeler v. State, Ind., 63 N. E. Rep. 975.

64. CRIMINAL EVIDENCE — Admissions While Under Arrest. — Where a prisoner is under arrest, but no threats or inducements are made, his statements, when informed of deceased's death, "Let him die and go to hell," and "I aimed to kill him," are admissible in evidence —State v. Conly, N. Car., 41 S. E. Rep. 534.

65. CRIMINAL EVIDENCE— Confessions. — Confession by defendant on the night of the commission of a crime to a friend held admissible. — Mathis v. State, Miss., 32 South. Rep. 6.

66. CRIMINAL EVIDENCE—Value of Sweat Box Confessions.— Confessions made by a prisoner after spending several days in a sweat-box, during which he obstinately denied commission of the crime, held involuntary and inadmissible. — Ammons v. State, Miss., 32 South. Rep. 9.

67. CRIMINAL LAW — Abandonment of Wife.— A plea of former conviction of abandonment of wife should show that after the first conviction defendant has not resumed the conjugal relation with his wife. — State v. Vollenweider, Mo., 67 S. W. Rep. 942.

68. CRIMINAL LAW—Malicious Destruction of Property. —Where, in a prosecution for maliciously destroying a fence, the property of another, the prosecution relied on an agreement between defendant and the one who built the fence as to the boundary line, evidence as to the true line was immaterial. — State v. Buck, Vt., 51 Atl. Rep. 1087.

69. CRIMINAL TRIAL— Continuance.— The sickness of one of defendant's attorneys held not such a reason for postponing the argument of a motion for a new trial in a criminal case as would make the refusal to postpone an abuse of the trial court's discretion. — Wheeler v. State, Ind., 63 N. E. Rep. 975.

70. CRIMINAL TRIAL—Defense of Drunkeness.— An instruction, on a trial for murder, that it was incumbent on the accused to prove the defense of intoxication beyond all reasonable doubt, held erroneous. — Gustavenson v. State, Wyo., 68 Pac. Rep. 1006.

71. CRIMINAL TRIAL—Evidence.—Where there was no offer to show any fact by a witness, or what his answer would be, an exception to the ruling sustaining an objection to a question asked such witness cannot be sustained.—State v. Buck, Vt., 51 Atl. Rep. 1087.

72. CRIMINAL TRIAL — Failure of Record to show Arraignment. —Where the record fails to show that accused was arrainged or that he pleaded or was called upon to plead, the verdict and sentence must be set aside.—State v. Preston, La., 32 South. Rep. 67.

73. CRIMINAL TRIAL — Instruction on Reasonable Doubt.—On a criminal trial, a request to charge that if the jury have a reasonable doubt growing out of the whole evidence, "or any part of it," of defendant's guilt, they cannot convict, held properly refused.—Winter v. State, Ala., 32 South. Rep. 125.

74. CRIMINAL TRIAL — Record. — Where the record failed to show that defendant, convicted of murder, was asked as to any statement prior to sentence, and the minutes were thereafter amended *nunc pro tunc*, and the part of the record in which that fact appears was supplied by *certiorari*, there was no error.—State v. Stafford, La., 51 Atl. Rep. 83.

75. DAMAGES—Personal Injuries.— In an action for injuries, plaintiff's testimony that, after the accident, he could not do as much work in a specific line as formerly, was admissible on the question of damages. —International & G. N. R. Co. v. Locke, Tex., 67 S. W. Rep. 1082.

76. DAMAGES — Personal Injuries to Child. — A child made a mental and physical wreck may recover of the one by whose negligence it was caused, not only for physical suffering, but for loss of earning capacity. — Delaware L. & W. R. Co. v. Devore, U. S. C. C. of App., 114 Fed. Rep. 155.

77. DAMAGES — Proper Elements. — Loss of expected profits sustained by a lessee of a railroad lease executed by a receiver, due to the termination of the lease prior to its natural term by order of court, is a proper element of damages to be awarded the lessee. — Farmers' Loan & Trust Co. v. Eaton, U. S. C. C. of App., Eighth Circuit, 114 Fed. Rep. 14.

78. DAMAGES— Unskillful Medical Treatment.— In an action for injuries an instruction that, if plaintiff exercised ordinary care in seeking medical aid, she might recover for all physical impairments, though they resulted "in whole" from mistakes of medical attendants, was improper.— Chicago City Ry. Co. v. Cooney, Ill., 63 N. E. Rep. 1029.

79. DEATH—Damages.—In an action for death, held no error to refuse to instruct that the law did not contemplate that any damages awarded to plaintiff should be a compensation to her heirs or to any other person. — Murphy v. Coppieters, Cal., 68 Pac. Rep. 970.

80. DEATH—Loss of Services. — Where a minor who is killed leaves a father entitled to his services, loss is presumed, and the fact that the minor worked for his father and received pay for his services does not show that he was an expense, and not a benefit. — Chicago & E. I. R. Co. v. Houston, Ill., 63 N. E. Rep. 1028.

81. DEATH—Presumption of Due Care. — In an action against a carrier for the death of an employee of a consignee of goods while unloading them from a car, the refusal to give an instruction that the law presumed that decedent exercised due care held not error — Cogdell v. Wilmington & W. R. Co., N. Car., 41 S. E. Rep. 541.

82. DEDICATION — Building Line. — Where one plats land and establishes a line along a street beyond which buildings are not to be erected, the reservation is an easement for the benefit of the public and property abutting on the street, and no grantee need be named. —Simpson v. Mikkelsen, Ill., 63 N. E. Rep. 1036.

83. DESCENT AND DISTRIBUTION — Purchase of Land from Heirs of Deceased Surety. — Parties who purchase land from the heirs of a deceased surety on a duly recorded guardian's bond, take with constructive notice of the liability of the land if the decedent's personal estate is insufficient to meet the claims. — Savings Building & Loan Assn. v. Tart, Miss., 32 South. Rep. 115.

84. DISORDERLY HOUSE—Evidence of Marriage. — On a prosecution against a man and women for keeping a house of ill fame, evidence as to whether the two defendants are married to each other is relevant to the issue involved. — Commonwealth v. Whipple, Mass., 63 N. E. Rep. 919.

85. DIVORCE—Ex Parte Order. — Where defendant is not served with process, and has no notice of an application for alimony and counsel fees, an *ex parte* order for the same is unauthorized and void. — Baker v. Baker, Cal., 68 Pac. Rep. 971.

86. DOWER—Conveyance in Fraud of Dower Rights.— Where a husband separates from his wife, and conveys his real estate to a corporation fraudulently created to defeat wife's dower interest, she can maintain an action against the corporation to establish the same.—Poillon v. Poillon, 75 N. Y. Supp. 488.

87. DRAINS—Limitation of Tax District.—Where a tax district established under the drainage laws is authorized to impose a property tax, and such tax must be voted for, the limits of the tax district must be fixed with certainty.—Richard v. Cypremort Drainage Dist., La., 32 South. Rep. 27.

88. EMINENT DOMAIN—Change of Trade.—In an action against a city for lowering the grade of a street, it was proper not to permit a witness to testify as to the rate per cent. of benefit that had accrued to other property on streets that had been lowered, the witness having testified to the increase in value of plaintiff's property. —City of Chicago v. Jackson, Ill., 63 N. E. Rep. 1013.

89. EMINENT DOMAIN—Height of Building.—In a proceeding against the city of Boston to recover damages sustained by reason of the limitation of the height of buildings on or near Copley Square by St. 1898, ch. 452, evidence that the price at which an adjoining parcel of real estate had been sold since the passage of such act was inadmissible.—Cole v. City of Boston, Mass., 63 N. E. Rep. 1061.

90. EQUITY—Remedy at Law.—Where a bill for equitable relief also alleges matter of purely legal cognizance, such allegations do not render the bill multifarious or affect the jurisdiction of the court to grant the equitable relief.—Letohatchie Baptist Church v. Bullock, Ala., 32 South. Rep. 58.

91. EQUITY—Right of Action.—A complaint, who had no cause of action at the time of the filing of his bill, cannot introduce one which accrued thereafter by an amended or supplemental bill.—Mellor v. Smither, U. S. C. C. of App., Fifth Circuit, 114 Fed. Rep. 116.

92. EQUITY—Vacation of Decree.—A circuit court may entertain a bill to set aside a decree on the ground of accident, mistake, or surprise, although the time for an appeal or for filing a bill of review has expired.—Dewey v. Stratton, U. S. C. C. of App., Fifth Circuit, 114 Fed. Rep. 179.

93. ESTOPPEL—Chattel Mortgage.—Recital in chattel mortgage as to mortgagor's residence could not estop mortgagee from showing actual residence, and where mortgage was acknowledged in place of actual residence statute relating to acknowledgments was complied with.—Gilbert v. Sprague, Ill., 63 N. E. Rep. 993.

94. ESTOPPEL—Purchaser at Trust Sale.—The assignee of a note secured by a deed of trust, who purchases the property at a sale under the deed of trust, cannot deny that the payee of the note, his assignor, accepted the deed of trust as security for such note.—Herbert Craft Co. v. Bryan, Cal., 68 Pac. Rep. 1020.

95. ESTOPPEL—Tax Sale.—As between the parties to a deed of ratification of a tax sale, the grantors are estopped from attacking and setting aside their own deeds on parol evidence.—Levy v. Levy, La., 32 South. Rep. 117.

96. EVIDENCE—Acceptance of Drafts.—Evidence of a parol agreement made before, or at the time of, the acceptance of drafts, is inadmissible to vary the absolute terms of the written contract made by the acceptance, by showing that the acceptance was conditional.—Levy & Cohn Mule Co. v. Kauffman, U. S. C. C. of App., Fifth Circuit, 114 Fed. Rep. 170.

97. EVIDENCE—Judicial Notice.—The court will take judicial notice that under the common law a married woman cannot possess personal property independent of her husband, unless a trust has been created for her separate benefit.—Rush v. Landers, La., 31 South. Rep. 95.

98. EVIDENCE—Knowledge of Animal's Viciousness.— In an action for personal injuries inflicted by a runaway horse, evidence of conversation with the owner after the accident held admissible on the issue of the owner's knowledge of the animal's viciousness.—Smith v. Duncan, Mass., 63 N. E. Rep. 988.

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99. EVIDENCE—Proof of Declarations.—Proof of declarations made by a United States district judge as to prior proceedings in his court held inadmissible against a party, though present and hearing such declarations. —Keith v. Marcus, Mass., 63 N. E. Rep. 924.

100. EVIDENCE — Sufficiency. — In an action for the death of plaintiff's intestate, written statements made by impeaching witnesses as to what plaintiff's witness told them, but not signed by him, held inadmissible in evidence.—Cogdell v. Wilmington & W. R. Co., N. Car., 41 S. E. Rep. 541.

101. EVIDENCE — Weight of Cattle. — A memorandum of totals of weight of cattle, taken from slips on which the weights were separately entered, without testimony of person making original entries, is not competent evidence of the weight. — Morris v. Wilson, Sons & Co., U. S. C. C. of App., Fifth Circuit, 114 Fed Rep. 74.

102. EXCHANGES — Lien on Membership.—The lien on a membership in a stock exchange, created by an assignment thereof as security for a loan, may be enforced without foreclosure as of a mortgage of personalty.— Nashua Sav. Bank v. Abbot, Mass., 63 N. E. Rep. 1058.

103. EXECUTORS AND ADMINISTRATORS — Decedent's Estate.—Statement accompanying objections to claim against a decedent's estate held not to show that the objections accured after the time for filing objections had expired, so as to authorize filing thereof after the time allowed by Code, § 313. — Christopher v. Stewart, Ala., 32 South. Rep. 11.

104. EXECUTORS AND ADMINISTRATORS—Misappropriation.—Where an executor borrows money for the estate, and pledges stocks as security, they cannot be recovered back by an administrator *de bonis non* without payment of the loan, though the executor appropriated the money to his own use. — Lyman v. National Bank of the Republic, Mass., 63 N. E. Rep. 923.

105. EXECUTORS AND ADMINISTRATORS — Right to Oppose Appointment.—A person without pecuniary interest is without standing to oppose the appointment of an administrator.—Succesion of Williams, La., 32 South. Rep. 65.

106. FALSE PRETENSES — Sufficiency of Information.— Information for obtaining money by false pretenses must describe the property obtained with the same fullness as in an information for larceny of the same property.—Sullivan v. State, Fla., 32 South. Rep. 106.

107. FENCES—Malicious Destruction.—In a prosecution for maliciously destroying a fence, the property of another, certain evidence considered, and held properly admitted for the purpose of showing ownership in the fence.—State v. Buck, Vt., 51 Atl. Rep. 1067.

108. FISH — Dredging for Oysters. — Under Acts 1898, ch. 90, conferring on all persons the right to dredge for oysters in all waters 14 feet deep, an ordinance of a county denying the right of dredging for oysters in such waters with a steam dredge is void. — Eaton v. State, Miss., 32 South. Rep. 2.

109. FORCIBLE ENTRY AND DETAINER—Dower.—Where dower in land has not been assigned, the widow's right thereto does not constitute her an owner, entitling her to prosecute an indictment for forcible entry and detainer.—State v. Thompson, N. Car., 41 S. E. Rep. 486.

110. FRAUD — Pleadings. — Where a complaint sets forth facts which necessarily show fraud, it is unnecessary that such acts be characterized as fraud. — Poillon v. Poillon, 76 N. Y. Supp. 488.

111. FRAUDS, STATUTE OF — Assignment of Lease.— Where a lessor is not a party to an assignment of the lease, he cannot question the validity of the assignment, under Rev. St. 1899, § 3415. — B. Roth Tool Co. v. Champ Spring Co., Mo., 67 S. W. Rep. 967.

112. FRAUD, STATUTE OF — Contract to Convey.—Part performance, consisting of entry and improvements, held insufficient to take oral contract to convey lands out of statute of frauds. — Perkins v. Perkins, Mass., 63 N. E. Rep. 926.

113. FRAUDS, STATUTE OF — Recovery on Implied Assumpsit.—Plaintiff in an action to recover on a contract cannot recover on an implied *assumpsit*, defendant having set up the statute of frauds, as against the contract. —Gazzam v. Simpson, U. S. C. C. of App., Second Circuit, 114 Fed. Rep. 71.

114. FRAUDULENT CONVEYANCES — Chattel Mortgages. —An instruction, in an action by a chattel mortgagee against attaching creditors who had seized the property, that the failure of plaintiff to record a prior mortgage securing in part the same debt, in the territory to which the property had been removed, was a badge of fraud, held erroneous. — Foster v. McAlester, U. S. C. C. of App., Eighth Circuit, 114 Fed. Rep. 145.

115. FRAUDULENT CONVEYANCES—Evidence.—The law will not deduce fraud from any number of acts, each of which is lawful and innocent in itself; but one who seeks to attach a fraudulent character to such acts must go further, and show that they were in fact done with a fraudulent intent and for a fraudulent purpose. —Foster v. McAlester, U. S. C. C. of App., Eighth Circuit, 114 Fed. Rep. 145.

116. GUARDIAN AND WARD—Father's Right to Compensation for Child's Board.—Whether a father, as guardian of his minor child, was entitled to be allowed for the latter's support, was a question of fact, a finding on which in favor of the father was implied by the decision of the probate court allowing him therefor. — McGreary v. McGreary, Mass., 63 N. E. Rep. 917.

117. GUARDIAN AND WARD — Persons Entitled to Appointment. — Where a person designated by Rev. St. 1895, art. 2575 *et seq.*, as having the prior right of guardianship, is not disqualified by article 2585, such person is entitled to the guardianship, though the court may be of opinion that some other person, not given preference by the statute, may better fill the position.— Heinemeier v. Arlitt, Tex., 67 S. W. Rep. 1038.

118. HEALTH OFFICERS—Appointment.—Under Pub. Acts 1895, ch. 145, an appointment by an incorporated city of a health officer, without the nomination of the mayor, held invalid, and vacancy properly filled by appointment by the county health officer.—Braman v. City of New London, Conn., 51 Atl. Rep. 1082.

119. HIGHWAYS—Assessment of Benefits.—Under St. 1896, ch. 417, § 6, and Pub. St. ch. 49, § 71, the two-year period within which benefits resulting from a new highway must be assessed dates from the acceptance of the way by the vote of the inhabitants of the town, and not from the order of the board of survey laying it out.—Janvrin v. Poole, Mass., 63 N. E. Rep. 1066.

120. HOMESTEAD — Acknowledgment. — Admission in the answer, in a suit to foreclose a mortgage, that the mortgagors executed the mortgage, held not an admission that they had waived their homestead rights by a valid and effectual acknowledgment.—Ogden Building & Loan Ass'n v. Mensch, Ill., 63 N. E. Rep. 1049.

121. HOMESTEAD — Foreclosure of mortgage.—When lands including a homestead are conveyed by deed of trust which is invalid as to the homestead, except as to an amount less than the secured debt, which is sufficient to remove previously existing liens from the homestead, a sale of the entire tract by the trustee passes no title to the homestead.—Hillyer v. Westfall, Tex., 67 S. W. Rep. 1045.

122. HOMESTEAD—Selection by Husband. — Declarations by a husband, on mortgaging one of two properties, indicating his intention to hold the other as his homestead, only bind the wife and render the mortgage valid in case the unmortgaged property is then used as a homestead.—Parrish v. Hawes, Tex., 67 S. W. Rep. 1044.

123. HOMICIDE—Assault With Intent to Kill.—Under Rev. St. § 2403, relating to assault with intent to commit any other felony, neither a battery nor a wounding is an essential element of the offense.—Knight v. State, Fla., 32 South. Rep. 110.

124. HOMICIDE—Degrees of Crime Charged.—On prosecution for manslaughter in first degree, held not error

to instruct that no conviction could be had for inferior degree of the crime.—People v. De Garmo, 76 N. Y. Supp. 477.

125. HOMICIDE—Instructions.—The giving of an instruction in a prosecution for murder, and refusal of an instruction requested, which limited the jury to the fact that deceased was shot in the back, without allowing them to consider how he came to be so shot, held reversible error.—Sullivan v. State, Miss., 32 South. Rep. 2.

126. HOMICIDE—Murder in Second Degree.—Where the evidence, on a prosecution for murder in the second degree, tended to show a reckless firing by the defendant, a charge that there must have been an intent to kill a human being was properly refused.—Bailey v. State, Ala., 32 South. Rep. 57.

127. HOMICIDE—Self-Defense.—An instruction as to self-defense which implied that defendant must seek safety in flight or other means than by defending himself from the impending danger, was erroneous.—Howard v. Commonwealth, Ky., 67 S. W. Rep. 1003.

128. HOMICIDE—Sufficiency of Information.—Under the statute providing what shall be sufficient to allege in an information for murder, an information containing such allegations, and also a defective statement of the manner of the murder, is good.—Gustavenson v. State, Wyo., 68 Pac. Rep. 1006.

129. HUSBAND AND WIFE—Charge on Separate Estate.—An order drawn on a married woman and husband by a contractor, who had agreed to build a house on her land, and accepted by them, held to constitute no charge on her realty.—Zachary v. Perry, N. Car., 41 S. E. Rep. 533.

130. HUSBAND AND WIFE—Fraudulent Conveyance.—Where a husband, domiciled in another state, conveys property to his wife for a debt, whether the husband becomes the debtor of the wife by taking and using her property depends upon the law of the domicile.—Rush v. Landers, La., 32 South. Rep. 95.

131. INDEMNITY BOND— Revenue Stamps. --Failure to put on an indemnity bond the stamps required by the United States revenue law does not invalidate the bond.—Wylie v. Commercial & Farmers' Bank, S. Car., 41 S. E. Rep. 504.

132. INDICTMENT AND INFORMATION—Harmless Error—Under the statute relating to defects in informations, an information for murder, variously alleging decedent's name as "Larson" and "Larsen," held not defective.—Gustaveson v. State, Wyo., 68 Pac. Rep. 1006.

133. INJUNCTION—Corporations.—Pending action by the state to determine the validity of a corporate organization, it has the right to have all matters held in abeyance by an injunction.—State v. New Orleans Debenture Redemption Co., La., 32 South. Rep. 102.

134. INJUNCTION—Enjoining Action at Law.—A stockholder of a corporation who has been induced by the representations or negligence of a vendor to buy his stock, in the belief that the corporation is not indebted to him, may sue to restrain the vendor from prosecuting an action of debt against the corporation.—Given v. Times-Republican Printing Co., U. S. C. C. of App., Eighth Circuit, 114 Fed. Rep. 92.

135. INJUNCTION — Fraudulent Misrepresentation.—Where plaintiff alleged a fraudulent statement by defendant that defendant's lessor had consented to an assignment of a lease to a responsible party, a finding that no such consent had been given rendered a finding as to plaintiff's responsibility immaterial.—Russell v. Bryant, Mass., 63 N. E. Rep. 927.

136. INJUNCTION — Reasonable Doubt.—Under Code 1892, § 557, a preliminary mandatory injunction requiring an electric light company to remove its poles from a public thoroughfare should not issue, unless there can be no reasonable doubt of its propriety.—Gulf Coast Ice Mfg. Co. v. Bowers, Miss., 32 South. Rep. 113.

137. INJUNCTION—Use of Firm Name.—Personal representatives of last survivor of firm held not entitled to enjoin use of firm name by a corporation in a similar business.—Fisk v. Fisk, Clark & Flagg, 75 N. Y. Supp. 482.

138. INSANE PERSONS—Liability to County for Care.—An insane person, cared for in the county insane asylum, having means, is liable to the county for board, care, and medical attention, as his relatives would be, were he a pauper.—Dandurand v. Kankakee County, Ill., 63 N. E. Rep. 1011.

139. INSANE PERSONS — Re-Examination. — Supreme court will not re-examine a person found incompetent, without a showing of a probability that he has been restored to competency.—*In re* Bischoff, 76 N. Y. Supp. 467.

140. INSURANCE—Misrepresentation in Application.—In action on life policy, evidence held to show party was over 54 when he made his application, contrary to his representations, and that a peremptory instruction should have been given for defendant.—Supreme Conclave Knights of Damon v. Saylor, Miss., 32 South. Rep. 50.

141. INTERNAL REVENUE—Coupons in Tobacco Packages.—No unconstitutional regulation is made by Act July 24, 1897, § 10, cl. 3, prohibiting attaching to packages of tobacco any article or thing whatsoever, other than certains pecified labels and stamps.—Felsenheld v. United States, U. S. S. C., 22 Sup. Ct. Rep. 740.

142. INTERNAL REVENUE — Reasonable Conditions in License from Patentee.—Reasonable and legal conditions imposed by the patentee in a license of the right to manufacture the patented article, restricting the terms under which it is to be manufactured and sold, held not a restraint on commerce, forbidden by Act July 2, 1890.—E. Bement & Sons v. National Harrow Co., U. S. S. C., 22 Sup. Ct. Rep. 747.

143. INTOXICATING LIQUORS—Police Regulation.—It is a valid police regulation of the sale of intoxicating liquors that women shall not be employed in connection therewith.—City of Hoboken v. Goodman, N. J., 51 Atl. Rep. 1092.

144. INTOXICATING LIQUORS—Sale of Less Than a Gallon.—On a prosecution for selling whiskey in a quantity less than a gallon, an instruction which failed to refer to the spirit with which the acts constituting the sale were done was not erroneous.—Wortham v. State, Miss., 32 South Rep. 50.

145. JUDGES—Prejudice.—Under Code Civ. Proc. § 170, subd. 4, a motion to call in another judge on account of bias of the trial judge is to be decided on affidavits, and not on statements of the judge.—Morehouse v. Morehouse, Cal., 68 Pac. Rep. 976.

146. JUDGES—Right to Appoint Special Judge.—Under Burns' Rev. St. 1901, § 1443, the presiding judge held to have power at an adjourned term of court to appoint a special judge to try a criminal case.—Wheeler v. State, Ind., 63 N. E. Rep. 975.

147. JUDGMENT—Chattel Mortgage.—Order of chancery court construed, and held not to require mortgagee of chattels to try his title in replevin suit, or to take away his right to assert title in suit on replevin bond, but merely to preserve mortgagee's rights.—Gilbert v. Sprague, Ill., 63 N. E. Rep. 993.

148. JUDGMENT—Judicial Mortgages.—Where land is sold to one who fails to record his title, the judgment creditors of the vendor acquire judicial mortgages on the property by recording their judgments after the date of such sale and before its registry.—Baker v. Atkins, La., 32 South. Rep. 69.

149. JUDGMENT—Mechanic's Lien.—A mechanic's lien foreclosure against a wife's property, in a suit against her and her husband, is not invalid because the judgment is against the husband personally, and execution cannot be enjoined by the wife.—Alexander v. Fransham, Mont., 68 Pac. Rep. 945.

150. JUDGMENT—Non Obstante Veredicto.—A judgment notwithstanding a verdict, taken subject to a point reserved, is as conclusive as an adjudication on the merits as one entered upon a directed verdict.—Casey

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v. Pennsylvania Asphalt Pav. Co., U. S. C. C. of App., Third Circuit, 114 Fed. Rep. 189.

151. JUDGMENT—Res Judicata.—A judgment of dismissal of an action, without prejudice, is not a bar to another action between the same parties on the same cause of action.—Bates v. Drake, Wash., 68 Pac. Rep. 961.

152. JUDGMENT—Res Judicata.—Decree finding amount due on a deposit by an insolvent bank held *res judicata* in a suit on a bond given to secure the deposit.—Wylie v. Commercial & Farmers' Bank, S. Car., 41 S. E. Rep. 534.

153. JUSTICES OF THE PEACE — Review on Certiorari. — *Certiorari* held to be the proper remedy to annul a judgment rendered in a justice court without the justice giving the notice of the time of the trial, as required by Code Civ. Proc. § 850.— Elder v. Justice Court of Third Tp., Fresno County, Cal., 68 Pac. Rep 1022.

154. JUSTICES OF THE PEACE — Taking Documents to Jury Room. — It is proper, on *certiorari*, to grant a new trial when the answer of the justice discloses that the jury carried to their room a written document, not introduced in evidence, which was calculated to injure the plaintiff.— Gildea v. Hill, Ga., 41 S. E. Rep. 492.

155. LANDLORD AND TENANT— Agreement to Repair.— In an action by a tenant for breach of an express agreement to put the leased premises in tenantable repair, the court properly instructed that the express contract must be proved. — Daly v. Demmon, Mass., 63 N. E. Rep. 943.

156. LANDLORD AND TENANT — Assignment of Lease.— One who accepts a written assignment of a lease thereby becomes, as between him and the lessee, liable for the rent as principal, the lessee becoming merely a surety, and their respective rights and liabilities are not affected by the statute of frauds. — Collins v. Pratt, Mass., 63 N. E. Rep. 946.

157. LANDLORD AND TENANT — Property on Leased Land. — The owners of a building situated on leased premises held to have a better right to the stone on which the building rested than one who claimed title under a bill of sale from the lessor.— Towsand v. Ford, 76 N. Y. Supp. 501.

158. LARCENY—Allegation of Ownership. — An indictment for larceny alleging that defendant stole "$26 current money, of the value of the goods and chattels of" a person named, held to sufficiently allege ownership of the property.— State v. King, Md., 51 Atl. Rep. 1102.

159. LIBEL AND SLANDER—Libelous Publication. — In an action against defendant for publishing article stating that plaintiff had been arrested at Coney Island with a married woman, etc., it was error to permit plaintiff to prove that another party had interpreted the article as stating that plaintiff had been arrested with a prostitute.—O'Brien v. Bennett, 76 N. Y. Supp. 498.

160. LIBEL AND SLANDER — Question for Jury. — In an action for libel against a newspaper, the defense of privilege, that the publications were fair reports of judicial proceedings, where depending in part on oral testimony, was for the jury.—Parker v. Republican Co., Mass., 63 N. E. Rep. 931.

161. LIBEL AND SLANDER — Reports by Detective Officers as Privileged.—Reports made by detective officers to their superiors, and inscribed in books kept for that purpose, held not privileged. — Billet v. Times Democrat Pub. Co., La., 32 South. Rep. 17.

162. LIFE INSURANCE — What is Meant by "Successful Vaccination." — The term "successful vaccination," in an insurance policy, held to mean only vaccination which had "taken," and not only such as had rendered the insured absolutely immune from smallpox. — Sovereign Camp Woodmen of the World v. Woodruff, Miss., 32 South. Rep. 4.

163. LIMITATION OF ACTIONS—Counties. — Even prior to the constitution of 1890, limitation did not run against a county's right to recover possession of public property, such as a court house, etc.—City of Bay St. Louis v. Board of Supvrs. of Hancock County, Miss., 32 South. Rep. 54.

164. MARITIME LIENS— Repairs. — Libelant, repairing scows in a foreign port, held entitled to a lien thereon, where the captain directing the repairs was without funds.—The No. 6, U. S. C. C. of App., Second Circuit, 114 Fed. Rep. 115.

165. MARRIAGE — Common-Law Marriage.— Where a common-law marriage has been in fact entered into, a subsequent admission of one of the parties that no such relation existed, or even had, held not to operate as a dissolution of the marriage. — Hutchinson v. Hutchinson, Ill., 63 N. E. Rep. 1023.

166. MASTER AND SERVANT—Assumption of Risk.—The risk of the falling of an iron bar, placed by an iron dealer in a rack in which there was not sufficient room for it, held assumed by a servant. — Langley v. Wheelock, Mass., 63 N. E. Rep. 944.

167. MASTER AND SERVANT—Assumption of Risk.—In an action for personal injuries where plaintiff's testimony showed that he was fully aware of the defect and voluntarily assumed the risk, a judgment of nonsuit was proper. — Smalls v. Southern Ry. Co., Ga., 41 S. E. Rep. 492.

168. MASTER AND SERVANT—Contract of Employment. — An employment terminable at any time may be modified at any time by either party as a condition of its continuance, and may be even split up, so as to allow recovery for one part, and disallow it as to another part, of a continuous service.— Norton v. Inhabitants of Town of Brookline, Mass., 63 N. E. Rep. 930.

169. MASTER AND SERVANT—Injury of Servant. — In an action by a servant against the master to recover for an injury, where the negligence of the master is established, evidence of contributory negligence must be undisputed and conclusive to warrant the court in directing a verdict for defendant.—Texas & P. Ry. Co. v. Parks, U. S. C. C. of App., Fifth Circuit, 114 Fed. Rep. 161.

170. MASTER AND SERVANT—Injury to Servant.—Negligent acts of fellow servants cannot be relied on as a defense to an action by a servant for personal injury, where it is clearly shown that such acts were done under the direct orders of the master.—Swensen v. Bender, U. S. C. C. of App., Ninth Circuit, 114 Fed. Rep. 1.

171. MASTER AND SERVANT—Vice Principal.—A mine foreman, who superintends and controls the entire conduct and operations of the mine, hiring and discharging all employes, and giving all directions to them, held to be a vice-principal, for whose acts and negligence the mine owner is responsible.—Alaska United Gold Min. Co. v. Muset, U. S. C. C. of App., Ninth Circuit, 114 Fed. Rep. 66.

172. MONEY LENT—Receiving Benefits of Agent's Act — A husband held liable for money obtained by the wife on notes purporting to be signed by him, he having received and used the money.—Mechanics' Bank v. Woodward, Conn., 51 Atl. Rep. 1084.

173. MORTGAGES — Defective Acknowledgement. — Where the fact that the notary taking the acknowledgment of a mortgage was disqualified was not apparent on the face of the mortgage or the certificate, the registration and recording of the mortgage is constructive notice to a subsequent mortgagee.—Ogden Building & Loan Ass'n v. Mensch, Ill., 63 N. E. Rep. 1049.

174. MORTGAGES—Ex-Parte Order.—Under a foreclosure decree directing a master to sell the mortgaged property, and authorizing him to adjourn the sale, the court had power, after notice of sale had been given, to enter *ex parte* an order requiring an adjournment of the sale to a certain date.—Old Colony Trust Co. v. Great White Spirit Co., Mass., 63 N. E. Rep. 945.

175. MORTGAGES—Foreclosure.—The showing in support of a motion to set aside an irregular mortgage foreclosure sale held not to show such interest in the land on the part of the moving party as to authorize the

granting of the relief asked.—Humboldt Savings & Loan Soc. v. March, Cal., 68 Pac. Rep. 968.

176. MORTGAGES—Interested Trustees.—A grantor in a deed of trust to secure a debt held entitled to avoid a sale by the trustees after they had become interested in a corporation which purchased the debt, or to affirm the sale and have an accounting from the corporation for the benefits of a resale of the property, which it had bought in.—Herbert Craft Co. v. Bryan, Cal., 68 Pac. Rep. 1020.

177. MORTGAGES — Security for New Debt.—The assignee of a satisfied mortgage taken as security of a new debt held to have no better equity in the mortgaged property than the assignee of a former mortgage for value without notice of its satisfaction.—Flye v. Berry, Mass., 63 N. E. Rep. 1071.

178.—MORTGAGES—Unauthorized Release. — Where a husband, after conveyance to his wife of lots subject to mortgage, procured an unauthorized release of the mortgage, held, the wife was not entitled to protection as a *bona fide* purchaser in an action to cancel the release.—Reed v. Jennings, Ill., 63 N. E. Rep. 1005.

179. MUNICIPAL CORPORATIONS — Appropriation for Construction of Bridge.—Where a city has appropriated money to construct a bridge, a contract for work rendered necessary by such construction held not subject to the objection that no appropriation has been made therefor.—City of Chicago v. Norton Milling Co., Ill., 63 N. E. Rep. 1043.

180. MUNICIPAL CORPORATIONS—Lighting Contract.—A contract with a city for lights will not be abrogated because another company had offered to furnish them cheaper, where the company had previously refused to reduce its rates.—City of Denver v. Hubbard, Colo., 68 Pac. Rep. 993.

181. MUNICIPALCORPORATIONS—Removal of Officers.—In the absence of express grant or implied limitation of authority, a municipal corporation possesses the incidental power to remove for cause the corporate officers, whether elected by it or by the people.—State v. City Council of New Orleans, La., 32 South. Rep. 22.

182. MUNICIPAL CORPORATIONS—Special Tax.—Under authority granted by the taxpayers of a town to incur a debt and to issue bonds, the authorities may, without issuing bonds, create the debt and levy a special tax within the constitutional limit.—Gray v. Bourgeois, La., 32 South. Rep. 42.

183. MUNICIPAL CORPORATIONS—Street Improvements. —Where the cost of making and collecting an assessment for a street improvement was included in the assessment, it was error to confirm the same.—Gage v. City of Chicago, Ill., 63 N. E. Rep. 1031.

184. MUNICIPAL CORPORATIONS—Validity of Bonds.—Where a city has issued bonds to an amount in excess of its constitutional authority, all of which were created by the same ordinance and sold at the same time, each bond is valid to the extent of its proportionate share of the debt lawfully contracted.—City of Columbus v. Woonsocket Inst. of Savings. U. S. C. C. of App., Fifth Circuit, 114 Fed Rep. 162.

185. NEGLIGENCE—Age and Discretion of Boy.—Where a newsboy 11 years old, while riding on the rear end of a wagon, hanging to the tail board, was injured by the pole of a following wagon striking him, an instruction that if, while in the exercise of ordinary care for a boy of his age, he was injured by the negligence of the defendant, the jury should find the defendant guilty, was error.—Illinois Iron & Metal Co. v. Weber, Ill., 63 N. E. Rep. 1008.

186. NEGLIGENCE — Capacity of Child Under Seven.—A child under seven years of age is incapable of such conduct as will constitute contributory negligence.—Chicago City Ry. Co. v. Tuohy, Ill., 63 N. E. Rep. 997.

187. NEGLIGENCE — "Gross." — There is no such legal degree of negligence as "gross" negligence, and it is not error to refuse an instruction that a defendant is guilty of gross negligence, as distinguished from ordinary negligence and willful negligence. — Purple v. Union Pac. R. Co., U. S. C. C. of App., Eighth Circuit, 114 Fed. Rep. 123.

188. NEGLIGENCE—Presumption of Contributory Negligence.—Where gates or bars are let down at a railway crossing while a train is passing or approaching and then raised again, a person injured while attempting to cross might be conclusively presumed guilty of contributory negligence; but otherwise, if the custom was to keep the bars down for long intervals, as, for instance, all night. — Baltimore, etc., R. Co. v. Landrigan (D. C. App.), 30 Wash. Law Rep. 595.

189. PARTIES — Infants.—Where a petition in a suit by certain heirs shows that some of them were minors suing by their next friend, the point that they were incapable by reason of their minority of joining in the suit must be made by special demurrer. — Egan v. Conway, Ga., 41 S. E. Rep. 493.

190. PARTIES—Non-joiner.—The non-joiner of a necessary party will not be regarded on appeal, when not complained of in the pleadings. — Rothrock Const. Co. v. Port Gibson Brick Mfg. Co., Miss., 32 South. Rep. 116.

191. PARTIES — Time for Making Objections. — In an action for injury to personal property, an objection on account of the failure to join as a party plaintiff one who has a joint interest with plaintiff in the property cannot be made after the evidence is in. — Meaney v. Kehoe, Mass., 63 N. E. Rep. 925.

192. PARTNERSHIP—Accounting.—An ineffectual effort by one partner to state and assign an account against the other partner does not defeat the right of the former to maintain a suit against the latter for an accounting.—Mellor v. Smither, U. S. C. C. of App., Fifth Circuit, 114 Fed. Rep. 116.

193. PARTNERSHIP—Action Against One Partner. — An action for the death of plaintiff's son could be brought against individual co-partners, and it was not necessary to bring it against the co-partnership.—Murphy v. Coeppiters, Cal., 68 Pac. Rep 970.

194. PATENTS — Process Invention. — The idea of the permanent retention in a reservoir of a large quantity of molten metal as a basis for unification of the product of blast furnaces received into it held sufficiently disclosed in the claim of the Jones patent, No. 404, 414.—Carnegie Steel Co. v. Cambria Iron Co., U. S. S. C., 22 Sup. Ct. Rep. 698.

195. PAYMENT — Receipts. — In action by physician for services, certain instruction as to effect of receipt given by him held properly refused, as misleading, if not erroneous. — Corbus v. Leonhardt, U. S. C. C. of App., Ninth Circuit, 114 Fed. Rep. 10.

196. PAYMENT — Voluntary Payment of Debt of Another.—One who voluntarily pays the debt of another, without any agreement to that effect with the debtor, cannot take the place of the creditor or in any way recover the money so paid of the debtor. — Parsons v. Insurance Co. (D. C. App.), 30 Wash. Law Rep. 616.

197. PHYSICIANS AND SURGEON— Action for Services — In action for services rendered decedent, defense that services were rendered by him under contract with hospital held not sustained by the evidence.—Corbus v. Leonhardt, U. S. C. C. of App., Ninth Circuit, 114 Fed. Rep. 10.

198. PLEADINGS—Admissions.—Where, in an action for death, defendants' answer admitted that one J, whose alleged negligence inflicted the injury, was defendants' employee, they could not afterwards urge that there was no proof of that fact.— Murphy v. Coppieters, Cal., 68 Pac. Rep. 970.

199. PLEADING—Substituted Complaint.—In an action for money loaned defendant through his wife as agent, held not error to allow a substituted complaint setting up that the wife obtained the money on notes purporting be signed by defendant and that defendant received and used the money.—Mechanics' Bank v. Woodward, Conn., 51 Atl. Rep. 1084.

200. PLEADING — Verified Account. — Under Gen. St. Kan 1897, ch. 95, § 108, a verified account must be taken

as true against a denial and a set-off pleaded in an unverified answer. — Cold Blast Transp. Co. v. Kansas City Bolt & Nut co., U. S. C. C. of App., Eighth Circuit, 114 Fed. Rep. 77.

201. PRINCIPAL AND SURETY—Termination of the Relation.—Where a security is paid by several sureties in equal proportions, their relation as co-sureties ceases, and each becomes an independent creditor of the principal, so that collections by one do not inure to the benefit of the others.—Cramer v. Redman, Wyo., 68 Pac. Rep. 1003.

202. PRIVATE ROADS — Necessity of Passageway.—If the applicant's outlet to the highway on his own ground or the way he now has does not afford him practical access to the highway, and cannot be made to do so at a reasonable expense, then he is entitled to the establishment of a passway in contest as a necessity.—Vice v. Eden, Ky., 68 S. W. Rep. 125.

203. PRIVATE ROADS—Opinions of Witnesses.—Where appellants objected to certain testimony by appellee's witnesses, they were not wholly responsible for the error of the court in excluding the testimony, as testimony of the same character was excluded upon appellee's objection.—Vice v. Eden, Ky., 68 S. W. Rep. 125.

204. PUBLIC LANDS—Inclosure.—Under Act Cong. Feb. 25, 1885 (23 Stat. 321), the fencing of land by the owner in good faith is not unlawful, though, in conjunction with other fences, unclaimed public lands are thereby enclosed.—Potts v. United States, U. S. C. C. of App., Ninth Circuit, 114 Fed. Rep. 52.

205. RAILROADS—Injury to Person on Track.—Where it was claimed that deceased, who was killed while crossing defendant's track, was on his way to board a train, evidence that his father gave him money for car fare just before he left home, and that there was no money in his possession, was admissible.—Chicago & E. I. R. Co. v. Huston, Ill., 63 N. E. Rep. 1028.

206. RAILROADS—Instructions.—In action against railroad company for running down a buggy and killing a 15-year-old girl riding therein, held error to give peremptory instruction for defendant.—Allen v. Kansas City, M. & B. R. Co., Miss., 32 South. Rep. 3.

207. RAILROADS—Limitation of Liability.—A new railway corporation, created as a result of the consolidation of certain roads, held bound by a contract of one of the roads to maintain a switch and side track, and entitled to be relieved from liability as provided in the contract.—Missouri, K. & T. Ry. Co. of Texas v. Carter, Tex., 68 S. W. Rep. 159.

208. RAILROADS—Setting Fires. — Where the engine which alone Could have set fire is identified, testimony that other engines set fires or threw sparks is incompetent, in the absence of proof of similar conditions.—Lesser Cotton Co. v. St. Louis, I. M. & S. Ry. Co., U. S. C. C. of App., 114 Fed. Rep. 133.

209. RAILROADS — Trespasser. — One who rides on a train which he knows, or with diligence would know, is prohibited from carrying passengers, is a trespasser, and not a passenger —Purple v. Union Pac. R. Co., U. S. C. C. of App., Sixth Circuit, 114 Fed. Rep. 123.

210. RECEIVERS — Authority to Lease Property.—A court, having possession of property through its receiver, may authorize him to lease the same.—Farmers' Loan & Trust Co. v. Eaton, U. S. C. C. of App., Eighth Circuit, 114 Fed. Rep. 14.

211. RECEIVER—Compensation —$12,000 held a reasonable compensation for two years' services as receiver for a railroad 60 miles in length. — Braman v. Farmers' Loan & Trust Co., U. S. C. C. of App., Eighth Circuit, 114 Fed. Rep. 18.

212. RELEASE — Joint Tort Feasors. — The person injured, by releasing and discharging from all damages done him one of the joint feasors, releases the other, though the release expressly stipulates he shall not.—Abb v. Northern Pac. Ry. Co., Wash., 68 Pac. Rep. 934.

213. REPLEVIN — Attorney's Fee. — Plaintiff in suit on replevin bond held entitled to judgment for attorney's fees incurred in defending replevin suit. — Gilbert v. Sprague, Ill., 63 N. E. Rep. 993.

214. SALES — Fraudulent Misrepresentations — Obtaining permission from the mortgagee to remove property covered by a mortgage back for purchase price held not a waiver of objection that the sale was induced by fraudulent misrepresentations. — Russell v. Bryant, Mass., 63 N. E. Rep. 927.

215. SALES—Recovery. — Where machinery has been sold to a planter, and he has attached it to his plantation, and the property has been sold under a pre-existing mortgage, the seller cannot, after the sale, recover the machinery from the purchaser.—W. T. Adams Mach. Co. v. Newman, La., 32 South. Rep. 38.

216. STATUTE — Quo Warranto Proceedings. — Under Ballinger's Ann. Codes & St. §§ 5781, 739, a prosecuting attorney, instituting a *quo warranto* proceeding against a corporation for alleged unlawful use of a city's streets, must show that the information was filed at the request of the municipal authorities, or that such authorities were not properly discharging their duties in the control of the streets. — State v. Seattle Gas & Electric Co., Wash., 68 Pac. Rep. 946.

217. STIPULATIONS—Repudiation for Mistake.— Counsel who has stipulated as to facts to save delay, may, on giving sufficient notice, repudiate any fact with respect to which the facts subsequently developed show that it was inadvertantly signed.— Carnegie Steel Co. v. Cambria Iron Co., U. S. S. C., 22 Sup. Ct. Rep. 698.

218. STREET RAILROADS — Evidence of Negligence.— The fact that a street car runs an unusual distance before it is stopped, after running over a person, is some evidence of improper management thereof.—Chicago City Ry. Co. v. Tuohy, Ill., 63 N. E. Rep. 997.

219. TAXATION—Assessments.—A bill will not lie to make a tax collector's conveyance conform to a description which did not exist at the time of the assessment.—Boone v. Dulion, Miss., 32 South. Rep. 1.

220. TAXATION—Clerk's Record.—Under Sand. & H. Dig. § 6612, the clerk's failure to keep the required record renders void a sale to the state for nonpayment of taxes.—Quertermous v. Walls, Ark., 67 S. W. Rep. 1014.

221. TAXATION—Exemptions. — A suit to relieve property of taxes assessed against it for one or more years is a proceeding for the reduction of assessments, authorizing the attorney of the tax collector to be compensated by 10 per cent. on the amount collected.—Methodist Episcopal Church v. City of New Orleans, La., 32 South. Rep. 101.

222. TAXATION—Money Legacy.—Inheritance taxes on a money legacy cannot be deducted from the principal of a legacy given in trust for the benefit of one for life with remainder to another.—*In re* Hoyt, 76 N. Y. Supp. 504.

223. TAXATION—Municipal Corporation.—Where a city is the owner of land used as a levee, it cannot be dispossessed by means of a tax suit based on assessment of the land as the property of a private individual — City of New Orleans v. Fredericks, La., 32 South. Rep. 80.

224. TAXATION— Sheriff's Final Settlement. — Under Ky. St. § 4147, requiring the sheriff to make final settlement as collector of the county levy within a certain time, under penalty, he was not liable for a year in which there was no county treasurer and no demand upon him to pay over the balance in his hands to any particular person.—Bates v. Knott County Court, Ky., 67 S. W. Rep. 1006.

225. TELEGRAPHS AND TELEPHONES—Delay in Delivering Message. — Objection that claim was not filed for delay in delivering telegram before institution of suit, as required by company's contract, held bad under the facts. — Western Union Tel. Co. v. Hays, Tex., 67 S. W. Rep. 1072.